NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1984 OF 2006

1. M/s Ajay Chemicals – A partnership Firm, Light Industrial Estate, Bhanpuri, Raipur (C.G.), - Through its Authorized Partner Inderchand Dhariwal, S/o Late Uttam Chand Dhariwal, aged about 61 years, 45/4 Sadar Bazar, Raipur (C.G.)

2. M/s Indian Petro Coal Products – A Proprietorship Firm, 23-C, Light Industrial Area, Bhilai, Distt. Durg (C.G.) - Through its sole Proprietor B.L. Porwal, S/o Late Shri Lalchand Porwal, aged about 54 years, R/o HIG – 6, Padnavpur-6, Durg (C.G.)

3. M/s Gulati Udyog, A Proprietorship Firm, 120 Light Industrial Area, Bhilai, Distt. Durg (C.G.) - Through its Sole Proprietor Shashi Gulati, R/o Block 27, Plot-9, Nehru Nagar, Bhilai, Distt. Durg (C.G.)

4. M/s Nagree Kemicals & Tar Products, A Partnership Firm, 3-A Light Industrial Area, Nandini Road, Bhilai- Through its authorized partner N.K. Kathawala, S/o Karim Bhai Kathawala, aged about 76 years, R/o Nandini Road, Bhilai, District Durg (C.G.)

… Petitioners

Versus

1. State of Chhattisgarh – Through the Secretary Industries, DKS Bhawan, Raipur (C.G.)
2. The Director Industries, Industries Directorate, Life Insurance Corporation Commercial Complex, Pandri, Raipur (C.G.)

3. Bhilai Steel Plant, through its Managing Director, Ispat Bhawan, Bhilai, District Durg (C.G.)

WRIT PETITION NO. 6034 OF 2006

M/s Utkal Hydrocarbons, a registered partnership firm, 16, Light Industrial Area, Bhilai-490026 (CG) Through its Authorized Signatory.

... Petitioner

Versus

1. State of Chhattisgarh Through The Additional Chief Secretary Commerce & Industries, Mantralaya, Raipur (C.G.)

2. Director of Industries Chhattisgarh, Directorate of Industries, Jeevan Beema Nigam Vyavsaik Parisar Pandri, Raipur (C.G.)

3. General Manager, District Trade & Industries Centre, G.E. Road, Durg (C.G.)

4. Bhilai Steel Plant, Ispat Bhawan, Bhilai – 490 001, Dist. Durg Through Managing Director.

5. M/s Bhilai Tar Products, 57, Industrial Estate, Bhilai – 490 026 Through Partner.

6. M/s Hindustan Chemical & Aluminium Industries, A-50, Light Industrial Area, Bhilai – 490 026, Through Partner

7. Kusum Kemicals Pvt. Ltd., 73-74, Light Industrial Area, Bhilai-490 026, through Managing Director.

8. M/s Golchha Chemicals, 64, Light Industrial Area, Bhilai 490 026, through Proprietor.

9. M/s Nagree Chemicals & Tar Products, 3-A, Light Industrial Area, Bhilai – 490026, through Partner

10. M/s M.P. Tar Products, 69-70, Light Industrial Area, Bhilai – 490 026, Through Partner.

11. M/s Gulati Udyog, 120, Light Industrial Area, Bhilai – 490 026 Through Proprietor.

12. Indian Petro-Coal Products, 23, Light Industrial Area, Bhilai – 490 026, Through Proprietor.

13. M/s Ajay Chemicals, 11, Industrial Estate, Bhanpuri, Raipur, Through Proprietor.

14. M/s Porwal Chemicals, 43, Industrial Area, Bhanpuri, Raipur, through Partner.

15. M/s Deepa Industries, 147/B, Light Industrial Area, Bhilai – 490 026, Through Proprietor.

16. M/s Raysinet Kemikal Company (P) Ltd. 31-35, 74-75 Industrial Estate, Bhilai - 490 026 Through Director.

... Respondents

Mr. Manoj Sharma and Mr. Abhishek Sinha, Advocates, for the Petitioner in Writ Petition No. 6034 of 2006.
Mr. Anand Dadariya, Advocate, for the Petitioners in Writ Petition No. 1984 of 2006 and for Respondents No. 9, 11, 12 & 13 in Writ Petition No. 6034 of 2006.
Mr. Bhaskar Payashi, Panel Lawyer, for the State.

C A V ORDER

Reserved on : 11.11.2016

Passed on : 05/01/2017

1. As the present Writ Petitions arise out of the same order dated 31.12.2005, they are being disposed of by this common order.

2. By way of the present Writ Petitions, the Petitioners seek to challenge the order dated 31.12.2005 issued by the Director, Industries, Chhattisgarh, whereby the Respondent-State contrary to and in violation of the guidelines issued by the High Court of Madhya Pradesh in M.P. No. 462 of 1981, with a *malafide* intention and arbitrarily has evolved the policy of distribution of chemical by-products viz Drained Napthalene Oil (DNO), De-Phenolyzed Oil (DPO) and Heavy Benzol Oil (HBO) produced from the Bhilai Steel Plant, an organization under the Steel Authority of India Limited. Apart from seeking quashment of order dated 31.12.2005, the Petitioners have also sought for a direction to the Respondents to restore the agreed formula of distribution formulated in pursuance to the recommendation made by the committee constituted at the instance of the High Court of Madhya Pradesh vide its decision dated 11.10.1984 passed in M.P. No. 462 of 1981.

3. Case of the Petitioners is that the Steel Authority of India Limited (for short, SAIL) has a steel plant at Bhilai known as Bhilai Steel Plant (for short, BSP) and in the course of manufacturing of steel, certain by-products are manufactured like DNO, DPO and HBO. Initially one M/s Raysinet Kemikal Company was registered with the District Industries Office, Durg, who was purchasing the above referred by-products. Later on, more and more Small Scale Industries (for short, SSI) were established for production of coal-tar, as a result of which the by-products from the BSP became scarce and the industries dependent upon the by-products from the BSP found it difficult to sustain themselves. Therefore, M/s Raysinet Kemikal Company initially filed a writ petition in the High Court of Calcutta, seeking a direction to the SAIL for supplying it the maximum by-products generated at BSP.

4. The High Court of Calcutta initially granted interlocutory order directing the SAIL for uninterrupted supply of by-products to it. The said interim order was later on vacated as the Supreme Court had set aside the order passed by the High Court of Calcutta and, at the same time, ordered that the Calcutta High Court does not have territorial jurisdiction and thereby transferred the matter to the High Court of Madhya Pradesh at Jabalpur (under the unified Madhya Pradesh). The High Court of Madhya Pradesh finally on 11.10.1984 disposed of the petition i.e., M.P. No. 462 of 1981, with a direction to the State authorities, more particularly to the Director, Industries, to appoint a committee of expert to go into the questions of installed capacity, the number of workers employed and necessary requirements of raw materials by each industries to run the unit and after ascertaining these figures, the committee may distribute the raw materials proportionately to all the concerned. It was also directed to evolve a reasonable formula and allot the raw materials proportionately in the light of the formula.

5. Based upon the said judgment of the Madhya Pradesh High Court, dated 11.10.1984, the State Government constituted a Committee on 30.11.1984. The Committee so constituted at the instance of the Madhya Pradesh High Court, submitted its report with all the consensus arrived at for distribution of the by-products and it was unanimously agreed that M/s Raysinet Kemikal Company would be given 20 M.T., Utkal Hydrocarbon would be given 12.5 M.T. and as far as for the other companies are concerned, they would be entitled for 10 M.T. and, in case, still if the raw materials are available at BSP, the same shall be distributed by pro-rata basis on the assessed capacity of the SSI as on 31.8.1982 and if for any reason the alloted quota is not lifted from the manufacturer, the quota of that manufacturer will be lapsed.

6. The said report of the Committee based upon the directives of the Madhya Pradesh High Court in M.P. No. 462 of 1981, got implemented with effect from 1.2.1986 onwards. In between, however, one M/s Deepa Industries somehow was able to influence the Director, Industries and has also sought from the State Government some share in the by-products of DNO, DPO and HBO sold by the BSP to it. The said claim of M/s Deepa Industries was considered through a committee constituted by the Commissioner, Industries. The said committee was constituted without the knowledge of the SSI or the existing purchasers of the raw material from the BSP.

7. The said committee in its report held that there was no need for a different assessment or a different formula for distribution within the one which was formulated at the first instance by the Committee constituted on 30.11.1984. However, it recommended to allot M/s Deepa Industries, 6 M.T. by-products and so far as others were concerned, it was retained to be the same as was suggested and agreed through the first committee constituted in this regard. Since the allotment made to M/s Deepa Industries was not much, the SSI did not challenge the same nor were they substantially prejudiced or adversely affected and, as such, the proposal for allotment of raw material to M/s Deepa Industries was acceptable to all.

8. Later on, the Director, Industries again constituted a committee on 12.8.1988 which in turn gave a report and on the basis of the report, a fresh order dated 23.2.1989 was issued in respect to the distribution portion and formula. By the order dated 23.2.1989, raw materials supplied to the different SSIs got reduced. The order dated 23.2.1989, claiming it to be arbitrary, illegal and contrary to the directions of the High Court, was subjected to challenge before the High Court in Writ Petition No. 2120 of 1989 along with other similar writ petitions. Meanwhile, on the creation of the new State of Chhattisgarh the matter got transferred to the High

Court of Chhattisgarh at Bilaspur. The Division Bench of this Court after hearing the parties, vide its order dated 14.7.2005 had quashed the order dated 23.2.1989 passed by the Commissioner, Industries and remitted back the matter to the Commissioner, Industries to take into account the actual increase in the raw materials produced by BSP and thereafter to redistribute the same in accordance with the formula worked up keeping in mind the observations made by the Madhya Pradesh High Court in its first order dated 11.10.84 passed in M.P. No. 462 of 1981.

9. The Division Bench of this Court had quashed the order dated 23.2.1989 for the reason that the Commissioner, Industries in the said order had taken the production capacity of the BSP of the by-products namely DNO, DPO and HBO of having gone up to 500 M.T. and all likelihood of its going up to 600 M.T. per month in the next year, was not well founded nor was it on the basis of any assessment made by the Commissioner, Industries. Rather, on verification, the factual data reflected that in between the period of 20 years, i.e., from 1984 to September, 2014, the production of 500 M.T. had been achieved only in the one year, i.e, in the year 1991-92, and in all the other years it was much less than the assessment of 500 M.T. or the presumed increase of 600 M.T. per annum.

10. After quashing the order dated 23.2.1989, the Division Bench relying upon the observations made in the judgment passed by the Madhya Pradesh High Court in M.P. No. 462 of 1981, dated 11.10.1984, remitted the matter back to the Commissioner, Industries and directed the authorities to take into consideration the actual increase in the raw materials and also after affording an opportunity of hearing to the authorities of the different industrial units which required the by-products from BSP and pass a fresh order within a period of three months.

11. After the Division Bench quashing the order dated 23.2.1989, the Commissioner, Industries again constituted another committee for making recommendations regarding distribution of chemical by-products of BSP on 16.8.2005. The said committee vide its recommendation dated 22.9.2005 made certain recommendations and while making recommendations, the formula propounded by the earlier committee and the ratio of distribution to the different industries were also maintained as per the earlier distribution pattern and ratio, as is evident from recommendation dated 22.9.2005 (Annexure P-11) filed along with the writ petition. However, to the utter surprise to the Petitioner in spite of specific recommendations made by the Fourth Committee on 22.9.2005, the Director, Industries contrary to the recommendations made by the committee on 22.9.2005 passed the impugned order dated 31.12.2005, and the Director, Industries guided by his own notions and philosophy and without any justification for applying his notions and philosophy, passed the impugned order bringing into an entirely new formula of distribution of the chemical by-products of BSP to the different industries. It is pertinent to note that this impugned order dated 31.12.2005 enunciating the new distribution of by-products to the different companies has applied a totally new formula or pattern of distribution without keeping in view the directives given by the Division Bench of this Court on 14.7.2005 in Writ Petition No. 2120 of 1989. It is this order dated 31.12.2005 which is under challenge in the present Writ Petitions.

12. Shri Manoj Sharma, learned Counsel for the Petitioners in Writ Petition No. 1984 of 2016, questioning the wisdom of the authority in passing the impugned order dated 31.12.2005 contended that the said impugned order has been passed in total violation of the judgment of the Division Bench of the Madhya Pradesh High Court that is the first basic judgment on the issue and which has elaborately dealt with the issue considering all the pros and cons of the case including the fluctuation in production of the BSP. According to him, the Madhya Pradesh High Court in its judgment dated 11.10.1984 had categorically enunciated the parameters and principles to be borne in mind while distributing raw material. Another aspect which has been argued by Shri Sharma is that the impugned order has been passed by the Director, Industries ignoring the recommendations made by the committee constituted in this regard whose recommendation dated 22.9.2005 also was based upon the previous decisions made by the High Court.

13. According to Shri Sharma, the High Court had again while deciding the bunch of writ petitions on 14.7.2005 laid down very specific parameters for arriving at an appropriate formula of distribution. That, these parameters laid down by the High Court in its judgment dated 14.7.2005 also have been totally given a go by. According to him, the Director, Industries before issuance of the impugned order ought to have considered at least the observations and guidelines made by the Division Bench vide its judgment dated 14.7.2005. After having passed an elaborate order by the Division Bench of the High Court there was not much left for the authorities to consider and decide and that all that the authorities had to decide upon, was to consider the judgment of the High Court and in the light of the said judgment make appropriate distribution the guidelines of which too has been discussed and laid down by the High Court. According to Shri Sharma, since the initial recommendation/ formula which was prepared by the Respondents was after due consultation with all the authorities but the impugned order in the present case has been passed totally ignoring the participation of the Petitioners and other similarly placed establishments who should have been consulted by the Director while deciding the same.

14. Terming the impugned order to be totally illogical, Shri Sharma submits that the passing of the impugned order was totally uncalled for, for the reason that right from 1984 onwards the distribution continued uninterrupted without any difficulty being faced from any corner. According to him, the Respondents have in the instant case transgressed all the powers that have been otherwise conferred upon them and that the authorities ought to have followed the recommendations made by the committee constituted in this regard. He thus prayed for the setting aside of the impugned order and for restoration of the supply.

15. Shri Anand Dadariya, learned Counsel appearing for the Petitioner in Writ Petition No. 1984 of 2006, primarily adopted the arguments put forth by Shri Sharma on behalf of the Petitioners in Writ Petition No. 6034 of 2006. In addition, Shri Dadariya also prayed that all that he intends to supplement or add with what has been argued by Shri Sharma in the said writ petition, is that while distribution is made the Court must hold that initially there should be a uniform distribution of 30 M.T. of raw material to be uniformly provided to all the industries and thereafter whatever raw material is left the same may be distributed at pro-rata basis. According to Shri Dadariya, it is incumbent upon the Respondents to consider the economic viability of the plant and accordingly distribute the raw materials. According to him, the experts in the committee must find out the installed capacity at industries and number of workers employed in each industries and the minimum requirement of raw material in such industries so as to make it economically viable and thereafter the raw material should be distributed proportionately and while this assessment is being made, the minimum of 30 M.T. of raw material to be supplied to each of the units and the remaining to be distributed on pro-rata basis. According to Shri Dadariya, in due course of time, the production of BSP has considerably improved.

16. Countering the arguments made on behalf of the respective Petitioners, the State Counsel, Shri Bhaskar Payashi, opposing the petitions, submits that the impugned order specifically has given reasons which forced the Government to pass an order which is under challenge in this petition. According to Shri Payashi, the Respondents in the impugned order has specifically spelt out one by one the necessities that crept in, in due course of time, compelling and forcing the State Government to reconsider its earlier policy.

17. According to him, any policy that the State Government evolves cannot be primarily taking into account the interest of the Petitioners alone, but the policy must be reasonable and fair insofar as the distribution of the by-products amongst all the claimants keeping in view the capacity of each of the units, the economical viability, the availability of by-products all has to be taken into consideration and that it should also be such where all the claimants get a reasonable amount of by-product as raw material so that each of the units can operate smoothly and could sustain. Thus, the State Counsel prays for the dismissal of the writ petitions holding it to be devoid of merits.

18. At this juncture, it is pertinent to mention that the present writ petitions had been heard continuously for about a week's time in the week commencing 7.11.2016. However, in spite of the matter being heard for the entire week there was no representation on behalf of the Respondents Nos. 4 to 8 & 10 and 14 to 16.

19. Shri Anand Dadariya, entering appearance on behalf of Respondents Nos. 9, 11, 12 & 13 in Writ Petition No. 6034 of 2016, addressed partly supporting the Petitioners.

20. Having heard the rival contentions put forth on either side and on perusal of the record what is necessary to appreciate is, that the first order that was passed in this regard that was on 11.10.1984 wherein the Division Bench of the Madhya Pradesh High Court, as it then was, while allowing the petition of the Petitioners made the following observations in paragraphs 22 and 23 which for ready reference are being reproduced herein under :

> **"22.** …In this view of the matter, therefore, the real question which deserves to be considered in this petition is about evolving a reasonable formula for supply of the raw material to the petitioner as well as other industries in the field. It is, however, unfortunate that before granting permission for starting new industries in the field it was not kept in view that the raw material may not be sufficient for all the industries to run properly and economically. If this had been kept in view, probably there may not have been contesting industries claiming raw material sufficient to run the industries. In this view of the matter, therefore, the principles which must be kept in view have to be enunciated. It is, however, plain that it is not possible for this Court to fix a reasonable formula for distribution but it cannot also be rousted that some principles could be evolved which if applied in evolving a formula will evolve a rational, reasonable and equitable formula for distribution of raw material to all the industries concerned. In this aspect of the matter, therefore, what appears essential to be considered is the installed capacity of an industry to utilize the raw materials every year. As it is well known that all industries could not get all the raw materials, which would be necessary to meet the installed capacity, something less than what is necessary is to be distributed and in order to arrive at a reasonable formula, the interests of the workers and also the economic condition of the industry will have to be assessed. In this view of the matter, therefore, it will also further have to be assessed as to what is the minimum requirement of a particular industry to make it run economically and in this regard consideration may also have to be done about the financial resources, labour potential and management potential available with each industry. In this view of the matter, therefore, it would be proper that the Director of Industries may appoint a committee of experts to go into these questions to first find out the installed capacity of each industry, the number of workers employed in each industry and the necessary requirement of raw material (quantity) for each industry to run it as an economic unit and after ascertaining the figures on this basis for each industry may distribute the raw material proportionately to all the industries

concerned and in this view of the matter, therefore, the lifting either best or lowest may not be very relevant but the relevant fact may be that the raw material allotted to each industry must be utilized for production and may not be wasted or spent in any other manner. This can always be safeguard by the Director of Industries in an appropriate manner.

23. It is, therefore, directed that the Director of Industries, in the light of the discussion above, will evolve a reasonable formula and allot the raw material available in the light of the formula to respective industries. It is, however, expected of the respondent No.3 to see that, if possible, the production of the raw material is increased so that the requirement of all these industries can be met as far as possible. It is further directed that till the formula in the light of the observations made above is evolved, the formula evolved by the Director of Industries after taking also into consideration the lifting by the respective industries shall be enforced and it shall continue to be enforced till a new formula in the light of the above directions is evolved.**"**

21. The said judgment of the Madhya Pradesh High Court had attained finality and based on the said judgment, a committee was constituted which in turn after due consultation with of the claimants of the by-product/raw material, submitted its report, and in clause 5.7 of its report it dealt with the issue of reasonable minimum requirement insofar as the rational distribution of raw material is concerned and it was unanimously agreed between all the parties for the minimum distribution of the by-products as was recommended by the committee. For ready reference, clause 5.7 of the recommendation of the committee constituted by the Commissioner, Industries is reproduced herein under:

"5.7 <u>Reasonable minimum Requirement – Rational Distribution of raw materials.</u> Because of the limitation as expressed in the aforesaid paragraphs, it was felt necessary to initiate a dialogue with the representatives of all the units collectively and find out a reasonable and rational system in consultation with them and acceptable to all. The Committee had discussions with them at length. In this connection at last, a system has been evolved which has been accepted by all the units in writing, which reads as follows :

The issue of distributions of Chemical Bye-Products from Bhilai Steel Plant was discussed in detail by Committee members with representations of all the units. It was unanimously agreed to as under:

1. The following minimum quantities will be distributed to parties as shown below every month

1. Reysinet Kemical -20 M.T.
2. Utkal Hydrocarbons -12.5 M.T.
3. All other parties -10 M.T. each

2. Rest of the material will be distributed on prorate basis as per the assessed capacities of the units as on 31.8.82 as specified in para 5.4.1 of the report.
3. If allocated quota is not lifted by any party, in any month, this quota of that month will lapse and will not be carried forward to next month."

This formula by and large takes care of the installed capacities, and raw materials requirements of the units looking to the present availability of these 3 bye-products (D.N.O., D.P.O., & H.B.). the formula evolved as above will ensure economic viability of all these units.**"**

22. Now sub-clause 2 of clause 5.7 has a cut off date of the capacities of the units as is existed on 31.8.1982, which clearly gives an indication for the inference to be drawn, that is the minimum distribution of the by-product has to be first in respect of those units which were already operational with assessed capacities as on 31.8.1982. That is to say, in case, if there is subsequent player born with a huge capacity he cannot claim for the by-product more than what the Petitioners and the other similar industries establish which were assessed of its capacity and was operational as on 31.8.1982. This, in other words, means that the units mentioned in clause 5.7 of the recommendation and also the units which were operational as on 31.8.1982 would have a preferential claim for by-product and any unit which has been subsequently established would not have a right created in their favour by virtue of the order passed by the Madhya Pradesh in M.P. No. 462 of 1981.

23. What is also pertinent at this juncture is, that in the subsequent decision i.e. in Writ Petition No. 2120 of 1989 and a bunch of connected writ petitions decided by the Division Bench of this Court on 14.7.2005, taking note of the earlier decision of the Madhya Pradesh High Court dated 11.10.1984 passed in Misc. Petition No. 462 of 1981, after considering the contentions put forth on either side, it was held as follows:

"(16) …Hence, the assumption in the order dated 23/02/1989 of the Industries Commissioner that the availability of the raw material has increased to 500 M.T. and was likely to increase to 600 M.T. per month, is factually incorrect. Although there have been some increases in some years, such increases have not been consistent. The order dated 23/02/1989 of the Industries Commissioner which is based on an erroneous assumption that the availability of the raw material has increased to 500 M.T. and may likely to increase up to 600 M.T. is therefore liable to be quashed.

(17) ...A reading of the aforesaid discussions and observations in paragraph 22 of the aforesaid judgment and order would show that the following factors have to be kept in view for working out the reasonable formula for supply of raw material to the Industrial Units: (i) new industries in the field were not to be encouraged as raw material may not be sufficient to all the industries to run properly and economically, (ii) the installed capacity of the industries to utilize the raw materials must be taken into consideration, (iii) the minimum requirement of a particular industry to make it run economically has to be assessed and considered; (iv) the financial resources, labour potential and management potential available with each industry is also to be considered (v) the raw material allotted to the industries must be utilized for production and is not wasted or spent in any other manner, (vi) after ascertaining the requirements of each industry to run it as an economic unit, the raw material may be distributed purportedly to all the industries concerned. The aforesaid relevant factors mentioned in the judgment and order dated 11/10/1984 will have to be kept in view by the authorities while redistributing the raw materials to the industrial units because of increase in the production of the raw materials.

(18) xxx xxx xxx

(19) xxx xxx xxx

(20) ...In the present case, thirteen Industrial Units were allotted raw materials by the order dated 31/01/1986 and one more industry was allotted raw material by the order dated 19/07/1988. In the allotment orders the minimum quantities of raw materials were allotted to fourteen industries and beyond the minimum quantities, the balance raw materials were to be distributed prorata as per their assessed capacities every month. If this formula for distribution was to be disturbed on the ground that the production and availability of raw material has in the meanwhile increased, fair play in action requires that they were heard by the authority who was to pass the order of re-distribution. In fact, the earlier order of allotment dated 31/01/1986 was passed on the report of the First Committee and the First Committee had heard the representatives of the thirteen Industrial Units. Hence, the representatives of the industrial units which have been allotted raw materials by the earlier allotment orders should be heard before the allotments made by the earlier orders are distributed by a fresh order of re-distribution on account of the increase in the production and availability of raw materials.

(21) For the aforesaid reasons, the order dated 23/02/1989 passed by the Industries Commissioner re-distributing the raw materials namely the bye products of the Bhilai Steel Plant, to the different industries is quashed and the Industries Commissioner is directed to take into account the actual increase in the raw materials and re-distributing the same in accordance with a reasonable formula worked out keeping in mind the observations in the judgment and order dated 11/10/1984 of the Madhya Pradesh High Court in Misc. Petition No. 462 of 1981 and in this judgment after affording an opportunity of hearing to the representatives of the Industrial Units which require the bye products of Bhilai Steel Plant as their raw materials. These directions will be complied with within a period of three months from today.**"**

In view of above, the said writ petition was allowed and the order dated 23.2.1989 passed by the Commissioner, Industries was quashed and the matter was again remitted back to the Commissioner, Industries for reassessment in accordance with the directives given by the Madhya Pradesh High Court vide order dated 11.10.1984 in M.P. No. 462 of 1981.

24. The plain reading of paragraph 21 of the said judgment clearly stipulates the fact that the Division Bench of this Court also had only acknowledged, affirmed and also confirmed the observations and guidelines issued by the High Court of Madhya Pradesh in M.P. No. 462 of 1981 decided on 11.10.1984. That, in other words, means that the Respondents were bound to follow the directives and guidelines issued by the Madhya Pradesh High Court. Further, what is also to be reflected is that after the decision of the Division Bench, that the committee constituted in accordance with the directives given by the Madhya Pradesh High Court in M.P. No. 462 of 1981 made recommendations with the consultation and all the parties reaching to a consensus and unanimously accepting to adhere to the said recommendations.

25. What is also pertinent to mention at this juncture is that the subsequent committee constituted in the light of the order of the Division Bench of this Court dated 14.7.2005 had also only after making a joint inspection of all the units demanding the by-products of BSP, recommended arrangement for redistribution of raw material, as under:

S.No.	NAME OF UNITS	Capacity as assessed on dt.31/8/82 MT	Minimum Quantity recommenced MT	Prorata distribution percentage%
1	M/s Resinet Chemical	4375	20	24.80%
2	M/s Utkal Hydrocarbons	2894	12.5	16.46%
3	M/s Coal Chem.	2605	10	14.82%
4	M/s Bhilai Tar Products	1048	10	5.96%
5	M/s Hindustan Chemicals	1153	10	6.56%
6	M/s Kusum Chemicals	1048	10	5.96%

7	M/s Golchha Chemicals	1048	10	5.96%
8	M/s M.P. Tar Products	512	10	2.91%
9	M/s Nagree Chemicals	377	10	2.14%
10	M/s Gulati Udyog	512	10	2.91%
11	M/s Indian Pertocoal	524	10	2.98%
12	M/s Deepa Industries	116	6	0.7%
13	M/s Ajay Chemicals	524	10	2.98%
14	M/s Porwal Chemicals	840	10	4.77%

26. What is also pertinent at this juncture to mention is that the said committee also while considering the future growth and also visualizing new establishments coming up, had referring to the judgment of the Division Bench of this Court recommended that new units should not be encouraged and only the old units would get raw material for their economic running. What also cannot be brushed aside is the observation of the Division Bench of this Court in its order dated 14.7.2005, wherein in paragraph 19 it was held as under:

> **"(19)** ...Hence, existing industries and new industries can be separately classified in two groups for the purpose of allotment of scarce raw materials from the Bhilai Steel Plant and existing Industries can be allotted raw materials first to ensure that they run in an economically viable manner and do not ultimately close down for non availability of minimum quantities of raw materials and the new Industries could be alloted raw materials only after the minimum requirements of the existing Industrial units are met. Such a classification in our considered opinion will not be arbitrary but rational having a rational nexus with the object sought to be achieved by the Industrial policy of the State namely growth of industries in the State...**"**

27. Thus, a plain reading of the recommendation made by the said committee would also reveal that the said committee had also recommended in accordance with the recommendations made by the first committee and was also in consonance to the directives and guidelines given by the High Courts both in M.P. No. 462 of 1981 decided on 11.10.1984 and also subsequently in Writ Petition 2120 of 1989 and a bunch of other connected writ petition decided on 14.7.2005. However, ignoring the recommendations made by the committee constituted subsequent to the decision of the Division Bench dated 14.7.2005 in Writ Petition No. 2120 of 1989, the Director, Industries passed an order based on his own personal opinion. The Director, Industries also did not care to note of the directives given by the High Court in two of its decisions rendered by the Madhya Pradesh High Court at the first instance on 11.10.1984 in M.P. No. 462 of 1981 and subsequently by this Court in Writ Petition No. 2120 of 1989 and bunch of connected writ petitions decided on 14.7.2015. The Director, Industries also did not care to discuss as to why according to him the guidelines laid down by the Madhya Pradesh High Court and the Chhattisgarh High Court have to be given a go by, while passing the impugned order. The Director, Industries also did not thought it fit for mentioning as to why the recommendations made by the committee constituted as per the directives of the Madhya Pradesh High Court dated 14.7.2005 is not acceptable to him and in all fairness if it was not acceptable to him he should have refused to accept the same and should have constituted a fresh committee and have sought for a fresh recommendation based upon the guidelines or the parameters that he wishes to have looked into by the committee. What is also pertinent to mention is that before passing of the impugned order the Director, Industries also did not care to call for a meeting of all the industries which were earlier consulted and which were drawing the by-products of BSP and which was also the mandate of the two judgments of the Madhya Pradesh as well as the Chhattisgarh High Court.

28. So far as the claim for the minimum 30 M.T. to each of the units as prayed for by Shri Dadariya is concerned, the said prayer has already been taken into consideration by the committee constituted after the disposal of the first petition in the year 1984, wherein in clause 5.6 it was clearly held that the minimum allocation of 30 M.T. of by-products to each of the units would not be plausible and reasonable in view of the needs of the various units with different capacities. In this view, the prayer so made by Shri Dadariya is not sustainable and thus stands rejected.

29. Thus, for all the aforesaid reasons, this Court has no hesitation in reaching to the conclusion that the impugned order dated 31.12.2005 is in clear contravention to the spirit and guidelines laid down by the two High Courts in its judgment dated 11.10.1984 as well as 14.7.2005. There appears to be no rational whatsoever on the part of the Director, Industries while passing the impugned order for deviating with the parameters and principles which were laid down and were being religiously followed by the Respondents till the impugned order was passed. It is all the more necessary to mention that the recommendations of the committee constituted at the instance of the judgment of the Madhya Pradesh High Court was acceptable to all the parties to the dispute as also was acceptable to all the industries which were receiving the by-products from the BSP and the supply was going on smoothly with the clear unambiguous guidelines so far as the distribution of by-products are concerned. There was no necessity for the Director, Industries to pass a fresh order upsetting the entire frame-work on the basis of which the earlier distribution was being made and which apparently was detrimental to the interest of a large number of industries which were receiving the by-products. Thus, the impugned order dated 31.12.2005 is not sustainable, deserves to be and is accordingly set aside/quashed.

30. It is directed that the Respondent-State shall pass a fresh order in accordance with the directives given by the Division Bench of this Court in Writ Petition No. 2120 of 1989 decided on 14.7.2005 and shall also take note of the recommendation of the committee that was constituted as per the order of the High Court, if required the State may also constitute a fresh committee in the light of the now prevailing factual position as the earlier committee and its factual report are quite old now.

31. With the aforesaid observations, the writ petitions stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

/sharad/