

(1955) 02 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 300 of 1954

Ahmed and Others

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 23-02-1955

Acts Referred:

Constitution of India, 1950 — Article 304

Citation : AIR 1955 Ori 184 : (1955) 21 CLT 189

Hon'ble Judges : Panigrahi, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : B.K. Pal and P.L. Misra, for the Appellant; Adv.-General, for the Respondent

Final Decision : Allowed

Judgement

Panigrahi, C. J.

1. This is an application under Article 226 of the Constitution of India praying for the issue of an appropriate Writ directing the Government of Orissa to forbear from enforcing the provisions of the Orissa Hides, Skins, Horns and Bones Control and Distribution Order, 1951 and for a declaration that the said Order and the Notifications issued thereunder are ultra vires. Petitioner 1 is a merchant at Khariar Road dealing in hides, skins horns & bones. These are collected from the adjoining areas in the State of Madhya Pradesh and also from the Nawapara Sub-division of Kalahandi district. The petitioner exports these articles outside the State and has got a large establishment to attend to the business. Petitioners 2 and 3 are his authorized agents who are in charge of the business.

2. The State of Orissa took over a Tannery formerly owned by the Ruler of Bolangir and have been running it in partnership with one Yahid of Madras. On 9-11-1954 the petitioner wanted to export 34 maunds of hides from Khariar Road to Raipur in the State of Madhya Pradesh and it is alleged that opposite party 2 (Director of Industries, Orissa) directed the Station Master, Khariar

Road, not to accept consignments of hides, etc., for transport. It is contended that this direction of the State Government constituted an infringement of the fundamental right of the petitioners and is void.

3. The Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act (Orissa Act 12 of 1951) under which the impugned Order was passed, was enacted with a view to control certain essential articles specified in the Schedule to the Act. This Act was passed on 5-2-1951 and was to expire on 1-1-1953, u/s 1(4) of the Act. On 5-12-1952, Orissa Act, 23 of 1952 entitled "The Orissa Essential Articles Control and Requisitioning (Temporary Powers) Amendment Act, 1952" was published in the extraordinary issue of the Orissa Gazette, whereby for the words and figures "1st day of January 1953" in the present Act, the words and figures "26th day of January 1955" were substituted.

The life of the parent Act was thus extended by two more years and the impugned Order known as the Orissa Hides, Skins, Horns and Bones Control and Distribution Order, 1951, was extended to Khariar Sub-division by a Notification of the Industries Department dated 5-7-1954, and later by an amended Notification dated 24-7-1954, its application was extended to Nawapara where the petitioners were carrying on business.

4. Mr. Pal appearing for the petitioners raised several contentions challenging the validity of the Order and the Notifications issued thereunder by Government by virtue of the powers Vested on them by Orissa Act 12 of 1951. The first and most important point that arises for decision is whether Orissa Act 12 of 1951 was alive on the day the order dated 20/21-11-1954, directing the Station Master not to accept the consignment was issued. The decision on this point would depend upon the constitutionality or otherwise of the Amendment Act 23 of 1952 which was passed in December of that year.

5. Reliance was placed on Article 304 of the Constitution which deals with restrictions on trade, commerce and intercourse amongst States. That Article reads as follows:

"Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law-

(a)

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

Mr. Pal's contention is that the requirement of this proviso had not been complied with before Orissa Act 23 of 1952 was introduced in the State Legislative Assembly. The Act merely says that it received the assent of the

Governor on 29-11- 1952, and does not say that the previous sanction of the President was obtained before the bill was introduced. Undoubtedly, the Act purports to place restrictions on freedom of trade within the State and is covered by the provisions of Article 304(b).

The proviso requires that such a Bill or amendment of the parent Act should have received the prior sanction of the President before its introduction, We called upon the learned Advocate-General to ascertain from the Secretariat whether this procedure had been adopted before the amending Bill was introduced. All that we have been told is that there was some exchange of correspondence between the Government of India and the State Government regarding the continuance of the Central Act 24 of 1946, (The Essential Supplies (Temporary Powers) Act.)

The correspondence throws no light on the question at issue. In any case there is nothing on the record to show that the sanction of the President was either applied for or obtained prior to the introduction of Act 12 of 1951. There is therefore no escape from the conclusion that the Amendment Act 23 of 1952 must be held to be void as it has not been passed in accordance with the requirements of the Constitution.

6. We would accordingly declare that no action can be taken under Act 23 of 1952, and the Orissa Hides, Skins, Horns and Bones Control and Distribution Order of 1951 must be deemed to have expired on the date on which Orissa Act 12 of 1951 expired. The petitioner undoubtedly has been put to great loss and harassment by reason of the executive orders passed by the Director of Industries and the Industries Department of the State Government, asking the Station Master not to accept the consignment for booking.

We would therefore direct that the petitioner shall recover the costs of this application which we assess at Rs- 300/- (Rupees three hundred). We would further direct that the articles belonging to the petitioner seized by the State Government should be released forthwith. The petitioner may also avail himself of any other remedy open to him, under the law, to recover compensation for the loss he has sustained. The petition is allowed.

Mohapatra, J.

7. I agree.