

(1992) 07 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2525 of 1988

Balwant Singh

APPELLANT

Vs

Divisional Forest Officer (West), Almora

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act, 1976 —
Section 10, 12, 2, 4, 5

Citation : (1992) 3 AWC 1559

Hon'ble Judges : V.N. Khare, J;K. Narayan, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant;

Final Decision : Allowed

Judgement

V.N. Khare, J.—This writ petition raises questions as to scope of executive power of the State imposing ban on setting up of new industry for manufacture of resin product.

2. Briefly the facts are that the Petitioner who intends to set up a factory for manufacture of varnish from Biroja applied to the Director of Industries, Government of U.P. for grant of a licence to that effect. The Director of Industries by order dated 23-3-83 granted licence to the Petitioner as applied for. Since u/s 10 of U.P. Resin and other Forest Produce Act 1976 (hereinafter referred to as the Act) every manufacturer of resin product is entitled to registration on payment of fee the Petitioner applied to the Deputy Conservator of Forest (West), Almora. Forest Division for being registered under the Act. The Divisional Forest Officer, Almora by letter dated 22-7-87 informed the Conservator of Forest that in view of government policy Petitioner's case cannot be recommended for registration by the concerned authority. The Petitioner thereafter, made several representations to the authorities constituted under the Act but was told that his proposed unit cannot be registered. This has led the Petitioner to file the present

writ petition.

3. The Petitioner in the writ petition originally prayed that the Respondents be directed to issue registration certificate to him. Subsequently, a counter-affidavit was filed on behalf of the Respondents where in it was stated that the subcommittee on Economic Development and Maintenance of State Cabinet has taken a decision in its meeting held on 5-12-80 that the resin being produced in a very little quantity no new unit for manufacture of resin product should be registered This decision of the subcommittee was conveyed to the Conservator of Forest, Kumaun Circle, Nainital by letter dated 25-5-81. Consequently, the application of the Petitioner for registration was rejected. In view of disclosure of facts relating to decision of the sub-committee, the Petitioner moved a formal application challenging the decision of the sub-committee as being illegal, ultra vires and unconstitutional This amendment application was allowed by this Court and the Petitioner was permitted to challenge the decision of the subcommittee placing total ban on the registration of new unit for manufacture of resin product as well as the letter dated 25-5-81 in pursuance of which his application for registration of the proposed unit was rejected.

4. Sri L.P. Naithani learned Counsel for the Petitioner raised two submissions before us. The first argument is that State Government under the Act has no power to totally prohibit the manufacture of varnish from Biroja or resin and secondly, by an executive order the State Government cannot ban the setting up of new unit for manufacture of varnish and decision of the sub-committee of U.P. Cabinet and the letter of the Government dated 25-5-91 are ultra vires, unconstitutional and hit by Article 19(1)(g) of the Constitution On the other hand, the learned standing counsel urged that the said executive order is referable to the Act and further since there is dearth of resin in the State of UP and therefore, no new unit can be permitted to be registered and the decision of the sub-committee and consequential order issued by the Government imposes a reasonable restriction and it is constitutionally valid.

5. For appreciating the argument of the learned Counsel for the parties, it is necessary to look into the provisions of the Act. The object of the Act is to provide for carrying on by the State of the trade of purchase and distribution of resin to the exclusion of others and for the regulation of manufacture and preparation of various articles based on forest produce and for matter connected there with. Section 2(f) of the Act defines "resin product." "Resin product" means derivatives obtained by processing of resin and includes resin, turpentine, hardened resin and also includes paints and varnishes manufactured directly from resin. At this point there was a controversy at the bar as to whether the Petitioner intends to manufacture varnish from Biroja or directly from resin. At present the Petitioner has not started his unit we, therefore, take it that the Petitioner intends to manufacture varnish from resin directly. Section 4 of the Act places restriction on sale, purchase and transportation of resin. Clause (a) of Section 4 of the Act provides that no person shall manufacture any resin product

or export any resin or resin product unless he is registered under and in accordance with Section 10 of the Act. Section 5 of the Act provides for issue of a permit for sale and transport of resin on payment of fee. Clause (c) of Sub-section (1) of Section 5 of the Act empowers the authorities to permit any person who has purchased any resin outside Uttar Pradesh to bring the same inside the State either for manufacture of resin product within the State or for transporting them elsewhere. Section 7 of the Act deals with fixation of price of resin. Section 8 of the Act makes it incumbent upon the State Government to purchase resin if offered for sale by any topper unless the same is not fit for manufacture of resin product. Section 12 of the Act empowers the State Government to delegate its power to any officer not below the rank of an Assistant Conservator of Forest. A perusal of the provisions of the Act which have been referred to above shows that the scheme of the Act so far trade or purchase and distribution of resin produce in this State is concerned State has created monopoly in itself whereas manufacture and preparation of various articles based on forest product namely resin is regulated by the Act.

6. In *State of Madhya Pradesh v. Thakur Bharat Singh* AIR 1967 SC 1170, it was held thus:

Every act done by the government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.

7. The same view was reiterated by the Supreme Court in *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, and Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, . In view of these decisions we have to examine as to whether there is any legal sanction behind the executive order issued by the Government imposing total ban on registration of new unit for manufacture of varnish. We have not been shown any provision of the Act or rule if any to the effect that State Government is empowered to totally ban the setting up new industries for manufacture of varnish or paint from resin. We have earlier referred the provisions of the Act which show that so far trade or purchase and distribution of resin produce is concerned State has created a monopoly in itself but so far manufacture of various article based on resin has been regulated and there is no power in the Government to totally ban the setting up new unit for manufacture of varnish for resin. Admittedly, the manufacture of varnish and paint is not an obnoxious or dangerous trade or business. In view of this we find that there is no such power in the State Government under the Act to completely prohibit setting of new industry for manufacture of varnish from resin. Learned standing counsel argued that the manufacture of varnish and paint has been prohibited by the Government in view of the shortage of resin in the State of U.P. This argument has no merit As noticed earlier Section 4(a) lays down that no person shall manufacture resin unless he is registered under and in accordance with Section 10 of the Act u/s 5(1)(c) of the Act by permission any industry can purchase resin from outside Uttar Pradesh for manufacture of resin product Thus the

setting up of new industry necessarily is not dependent on the grant or allotment of resin from the U.P. Government. These provisions merely regulate the trade and business of manufacture of varnish from resin. The only requirement under the Act for setting up industry is registration u/s 10 of the Act which a citizen is entitled on payment of fee as prescribed. We, therefore, are of opinion that while exercising power of regulation, the State Government cannot totally prohibit the setting up of new industry for manufacture of varnish from Biroja or resin by an executive order. The result of discussion is that the decision of the sub-committee dated 5-12-80 and State Government's letter dated 25-5-81 having no backing of law are illegal and ultravires and deserve to be quashed. We accordingly quash the decision of sub-committee dated 5-12-80 to the extent it prohibits setting up new industry for manufacture of varnish from r*sin and State Government's letter dated 25-5-81 and the order rejecting Petitioner's application for registration and direct the Respondents to consider the application of the Petitioner for registration u/s 10 of the Act in accordance with law.

8. Before we part with the case, we may observe that in case the Petitioner is registered under the Act, there would be no obligation on the part of the State Government to allot resin for his unit.

9. In the result the writ petition is allowed There shall be no order as to costs.