
(1993) 07 MAD CK 0055
In the Madras High Court

Bangalore Agarbathi Raw Materials Manufacturers and Millers Co-operative Society APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Citation : (1994) 2 MLJ 372

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—Writ Appeals 42 and 43 of 1993 are, preferred against the common order dated 8-1-1993 passed by the learned single Judge in Writ Petition Nos 354 and 355 of 1993. Writ Appeal No. 42 of 1993 relates to the order passed in Writ Petition No. 354 of 1993 whereas Writ Appeal No. 43 of 1993 relates to the order passed in Writ Petition No. 355 of 1993. When these two writ appeals came up for hearing, it was brought to our notice that pursuant to the direction issued by the learned single Judge in the order under appeal, the application filed by the petitioner therein has been considered by the petitioner therein has been considered by the State Government and the same has been rejected by the order dated 28.2.1993, which has been challenged in Writ Petition No. 4994 of 1993. Therefore, we directed the said writ petition to be posted along with these writ appeals for hearing, as in that writ petition the State Government has filed the objections. Accordingly, these three matters are heard together.

2. In Writ Petition No. 354 of 1993, the petitioner who is the appellant in these appeals, sought for quashing the order dated 18.12.1992 bearing G.O. (1-D) No. 128 passed by the State Government directing that a quantity of 1,000 metric tonnes of sandal sapwood be sold to M/s. Seshasayee Paper and. Boards Limited at Rs. 600 per metric tonne on an experimental basis and a quantity of 1,000 metric tonnes of sandal sapwood be sold to Thiruvallur Multi-purpose Workers Industrial Co-operative Society at Rs. 540 per metric tonne allowing a rebate of

10% for the society over the rate of Rs. 600 in item (i) and to issue a direction to the State Government to dispose of the total quantity of 4,000 metric tonnes of sandal sapwood either by public auction or to sell the same to the members of the petitioner society. In Writ Petition No. 355 of 1993, the very same petitioner has sought for a direction to the State of Tamil Nadu to allot 1,000 metric tonnes of sandal sapwood to the petitioner at the rate of Rs. 3,500 per metric tonne or in the alternative to direct respondents 1 to 4 herein to conduct public auction for the disposal of accumulated stock of 4,000 tonnes of sandal sapwood. There was a common prayer made in both the writ petitions. Hence, the learned single Judge heard both the writ petitions together and decided them by a common order.

3. Learned single Judge has held that sale of 1,000 metric tonnes of sandal sapwood to each of the respondents 5 and 6 was only on experimental basis and was intended to prevent smuggling and that the application filed by the petitioner was not yet disposed of and that the decision to sell 2,000 metric tonnes of sandal sapwood to respondents 5 and 6 did not suffer from any infirmity. Learned single judge was of the view that it was open to the State Government to choose its customers and that no citizen has any right to obtain a direction to the State Government that it should enter into a contract with him. Accordingly, W.P. No. 354 of 1993 was dismissed. However, W.P. No. 355 of 1993 was allowed in part and a direction was issued to the State Government to consider the application of the petitioner dated 28.8.1992 for allotment of sandal sapwood and pass orders on merits and in accordance with law, within a period of one month from the date of receipt of a copy of the order.

4. As already pointed out, pursuant to the direction issued in W.P. No. 355 of 1993, the State Government has considered the application of the petitioner and has rejected the same by order dated 28.2.1993 bearing No. 1424/FR.IV/93-7. It is the validity of this order that is challenged in Writ Petition No. 4994 of 1993.

5. It is contended by the learned Senior Counsel for the appellant who is also the petitioner in the connected writ petition that sandal sapwood is the property of the State and no property of the State can be disposed of by private negotiations and it should have been disposed of only by way of public auction or by prescribing certain norms on the basis of which it could have been disposed of and that the order disposing of 2,000 metric tonnes of sandal sapwood in favour of respondents 5 and 6 is arbitrary, inasmuch as it has not taken into consideration the application of the petitioner pending on that date offering higher amount per metric tonne and has disposed of the sandal sapwood without fixing any eligibility criteria or without any norms. It is submitted by learned senior counsel that such a decision of the State Government suffers from arbitrariness and as such, it is not sustainable. Regarding respondents 5 and 6 it is contended that they are not actual users and there is no material whatever produced by them to show that they are the actual users of sandal sapwood and that on the contrary, it is the case of the appellant that respondent No. 5 is a big

business company manufacturing paper and paper board and not dealing in sandal sapwood and respondent No 6 is a small multi purpose co-operative society dealing in toys and it does not require 1,000 tonnes quantity of sandal sapwood as is now sold in its favour. The 6th respondent has no required accommodation, required number of workers and all that is intended is only to make money by selling the same to others. As far as the prayer in W.P. No. 4994 of 1993 is concerned, it is the case of the petitioner that the order of the State Government does not stand to any reasonable scrutiny, inasmuch as it has not taken into consideration the requirement of the petitioner society which is an actual user and the State Government has rejected the application of the petitioner on the ground that if sandal sapwood is sold to the petitioner, it would not be possible to control sandal wood smuggling. As such, it is the case of the petitioner that arbitrarily, the application of the petitioner has been rejected.

6. The case of the State Government as well as that of the respondents 5 and 6 is that no doubt, sandal sapwood is State property and it should have been disposed of by public auction, that in the past, the State Government disposed of sandalwood by public auction, but it resulted in helping smuggling of sandal wood and that therefore, the State Government stopped disposing of sandal sapwood for some time in order to prevent smuggling of sandal sapwood; but sandal sapwood got accumulated, that the chief Conservator of Forests recommended that such a large quantity of sandal sapwood should not be kept unnecessarily, that if it is not disposed of, it would deteriorate and the State would be put to loss and therefore, keeping in view the recommendation of the Chief Conservator of Forests and also at the same time, to keep under Control the smuggling of sandal wood, the State Government decided to sell 2,000 metric tonnes by way of experimental measure to respondents 5 and 6 only which, according to the State Government, are the actual users. It is also submitted on behalf of respondent No. 6 that it is a multi-purpose cooperative society formed by the workmen and if " the State Government in order to benefit such a co-operative society has decided to sell 1,000 metric tonnes of sandal, sapwood, it cannot be held that the State Government has acted arbitrarily. It is also submitted that the 6th respondent being a cooperative society formed by the workmen, distinguishes itself from the general public. Therefore, if the State Government has chosen the 6th respondent, it cannot be held to have made any discrimination.

7. Learned Government Advocate further brought to our notice the stand taken by the State in the counter filed in both the cases and contended that mainly to prevent smuggling of sandalwood, such a course has been adopted. In addition to this learned Government Advocate as well as learned Counsel appearing for respondents 5 and 6 in the writ appeals relied upon an amendment to Rule 130-A of the Tamil Nadu Forest Department Code issued on 16th October, 1992 and contended that as per the amendment, it is open to the State Government to dispose of sandal sapwood by way of private negotiations and therefore, the order disposing of 2,000 metric tonnes of sandal sapwood in favour of

respondents 5 and 6 is also well within the power of the State Government, as it is in conformity with the amendment effected to Rule 130-A of the Tamil Nadu Forest Department Code. In addition to this, learned Counsel for the respondents 5 and 6 placed reliance on a decision of the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and a decision of the learned single Judge of this Court reported in *Danya Elecnic Co. v. The State of Tamil Nadu 1992 Writ L.R. 429*.

8. We will now take up for consideration these rival contentions. It is not disputed and it cannot at all be disputed that sandal sapwood is a State property. Therefore, it follows that state property cannot be disposed of arbitrarily and it can be disposed of in such a manner that it yields maximum benefit to the revenue of the State. Disposal of the State property by way of public auction is one of the accepted modes of disposal of State property. In the very same decision the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , relied on by learned Counsel for respondents 5 and 6 this proposition has been specifically accepted:

On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, where it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule, but when the reason for the departure must be rational and should not be suggestive of discrimination. Appearance of Public Justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

Applying the said Rule, it is not possible to sustain the impugned G.O. (1-D) No. 128, dated 18.12.1992, disposing of 2,000 metric tonnes (1000 metric tonnes in favour of each of respondents 5 and 6). Thus by the said Government Order 2,000 Metric tones of sandal sapwood has been disposed of, by way of executive decision, not on the basis of any criteria or norms laid down nor by way of public auction. The said order reads thus:

The Principal Chief Conservator of Forests has stated that a huge quantity of 4,000 tonnes of sandal sapwood is lying accumulated in various depots at Thirupattur, Salem and Sathyamangalam. He has stated that for strategic reasons of containing smuggling, auctioning of the sandal sapwood is not considered necessary and that they should be disposed off to the actual user industries. In the proposal, the Principal Chief Conservator of Forests has further stated that the President, Thiruvallur Multi-purpose Workers Industrial Co-operative Society. Thiruvallur, has requested supply of sandal sapwood for use in manufacturing process of toys and handicraft items etc. The Principal Chief

Conservator of Forests has recommended that as an experimental measure, supply of 1,000 M.T. of sandal sapwood may be allotted to M/s. Seshasayee Paper and Boards Limited at the rate of Rs. 600 (Rupees six hundred only) per metric tonne and to Thiruvallur Multipurpose Workers Industrial Co-operative Society at the rate of Rs. 450 (Rupees four hundred and fifty only) per metric tonne respectively,

2. The Government have carefully examined the proposal of the Principal Chief Conservator of Forests and direct that,

(a) A quantity of 1,000 M.T. (one thousand) of sandal sapwood be sold to M/s. Seshasayee Paper and Boards Limited at Rs. 600 (Rupees six hundred only) per metric tonne on an experimental basis and

(b) A quantity of 1,000 (one thousand) Metric tonnes of sandal sapwood be sold to Thiruvallur Multipurpose Workers Industrial Cooperative Society at Rs. 540 (Rupees five hundred and forty only) per metric tonne allowing a rebate of 10% from the society, over the rate of Rs. 600 (Rupees six hundred only) in item (i) above.

3. With a view to avoid the supply of electricity by the forest department and the possible fire hazards due to the setting up of the pulverization unit inside the forest area and also to prohibit the unauthorised entry of strangers into the forest area, the Government direct that the Thiruvallur Multi-purpose Workers Industrial Co-operative Society be permitted to take the sandal sapwood to their own premises and to pulverize them under the supervision of the officials of the forest Department.

It is not possible to infer from the said order that the State Government proceeded to dispose of the sandal sapwood to only actual user industries. It did not have a list of actual user industries and it did not also prescribe any qualifications or norms for deciding as to which industry can be held to be actual user industry. Further, it did not call for any application or tenders from the actual user industries. Thus, it arbitrarily decided to sell in favour of respondents 5 and 6. It is also not stated in the impugned order that there was any request made by respondent 5 for sale of sandal sapwood in its favour. However, during the course of arguments, learned Government Advocate has brought to our notice a letter written to him by the Secretary to Government dated 28.7.1993 stating that respondents 5 and 6 had made such a request. If that be so, there must have been a reference made to such a request in the impugned order, or at least, a copy of the request made by respondents 5 and 6 ought to have been produced before us, but no such copy of the request is produced before us, but no such copy of the request is produced before us. However, it is brought to our notice by learned Counsel for 6th respondent that the very order states that there was a request made by Thiruvallur Multipurpose Workers' Industrial Co-operative Society, Thiruvallur. It is true that it is stated in that order that the Society had made a request. But, in the impugned order there is no reference to the quantity

requested by the 6th respondent. However it was not at all difficult for the State to produce a copy of the request made by the 6th respondent Society, which has not been done. Therefore, we have to proceed on the basis that the State Government decided on its own to dispose of 2,000 metric tonnes of sandal sapwood in favour of respondents 5 and 6 (1,000 metric tonnes to each). Such a decision, as already pointed out, is opposed to the interest of public revenue and is opposed to the very norms to be followed in the matter of disposal of State property.

9. The rule relied upon by the learned Counsel for respondents 5 and 6 and also by learned Government Advocate also does not help them. Part of Rule 130-A as it stood prior to 16.10.1992 was as follows:

Lease of timber, fuel and bamboo coupes and all other forest produce shall not be sold otherwise than in public auction.

The aforesaid portion of the Rule came to be substituted by the following amendment:

Lease of timber, fuel and bamboo shall not be sold otherwise than in public auction. Provided that the sale of bluegum leaves, pulp-wood and wattle bark grown in the Nilgiris and Kodaikanal Hills used in the pulpwood and paper industry may be by allotment or negotiations where the Government decide to do so for good and sufficient reasons.

It is not disputed before us that sandal sapwood is not grown in Nilgiris and Kodaikanal Hills. No material is placed, nor is it possible to hold that sandal sapwood falls in the category of bluegum leaves, pulpwood or wattle bark. Even for the sake of argument, it is so, it should have been grown in Nilgiris and Kodaikanal hills, whereas sandal sapwood as admitted by the respondents is not grown in Nilgiris and Kodaikanal Hills. Therefore, the provisions relied upon by the respondents does not help them. On the contrary, even the substituted Rule 130-A of the Tamil Nadu Forest Department Code also insists that forest produces shall not be sold otherwise than in public auction, sandal sapwood is one of the forest produces, therefore, it should auction. It is not even the case of respondent No. 5 that it is one of the actual user industries of sandal sapwood. In fact, no counter has been filed by the said industry. On the contrary, it is the case of the petitioner/appellant that it is the actual user of sandal sapwood, Regarding respondent No. 6, it has been further stated in the reply affidavit as follows:

In this context it is necessary to point out the respondents 1 to 4 have also averred in para.3 of the counter that the 6th respondent herein needs sandal sapwood for coating purposes in the manufacturing process of toys and other handicrafts. However, the 1st to 4th respondents have not come forward with any statistics as to the capability of the 6th respondent to manufacture toys, as to whether the 6th respondent is employing any artisans to make toys, if so how many as to what purpose does sandal sapwood would have to be pulverised into

a powder/compound for coating purpose. However the 1st to 4th respondents have not produced an iota of evidence to substantiate that the requirement of the 6th respondent is so much that it would utilise 1,000 metric tonnes of sandal sapwood powder to coat its toys. It may be relevant to point out that the entire volume of 1,000 metric tonnes of sandal wood would occupy a volume of more than 15 first court halls of this Hon"ble Court. If 10 kilos of sandal sapwood are pulverised and made into powder it would suffice to coat all the toys if any manufactured by the 6th respondent. One lorry load can only carry 6 tonnes. Even to transport 1,000 metric tonnes a person would require 160 lorries. To pulverise 1,000 metric tonnes it will take a minimum of 10 working years. The 30 to 40 members of the appellant have about 840 pulverising units each pulverising unit will be 5 to 6 times the size of first court hall. The power capacity to run a pulveriser will be 50 H.P. per pulveriser. Therefore the members of the petitioner are capable of utilising and pulverising the 1,000 metric tonnes of sapwood. Nor proof has been shown whether the 5th and 6th respondents have sufficient capacity to utilise and pulverise the 1,000 metric tonnes of sandal sapwood. This Hon"ble Court may be pleased to call for a report about the activities of the respondents 5 and 6 to examine their bona fides. The counter-affidavit of the 6th respondent who is allegedly an actual user of sandal sapwood has not commented elaborately or unambiguously anywhere that sandal sapwood is used for coating its toys. However the 6th respondent has not clearly stated about the market potential of its toys and whether any experiments have been carried out to see the demand is there, would it be equal to the enormous export and local market potential of the Agarbathi Industry.

In addition to this, respondent No. 5 has not filed any counter and respondent No. 6 has not stated in the counter-affidavit in what manner it uses the sandal sapwood and its capacity. Under these circumstances, we are of the view that the State Government without being satisfied as to whether respondents 5 and 6 are actual user industries of sandal sapwood, has decided to sell 2,000 metric tonnes of sandal sapwood to them.

10. It is not possible to hold that the decision in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , in anyway comes to the aid of respondents. The very proposition laid down in the decision at paragraph No. 39 as reproduced earlier would go against them. It is also not possible to hold that the decision in *Danya Electric Company v. The State of Tamil Nadu*, 1992 Writ L.R. 429, lays down any proposition which can be of any help to the respondents. However, an alternative submission was made by learned Counsel for the 6th respondent that the State Government has decided to sell 2,000 metric tonnes in favour of respondents 5 and 6, the request of the petitioner is only to sell 1,000 metric tonnes to it and that merely because that request is not granted, the order passed in favour of respondents 5 and 6 need not be interfered with. We have already pointed out that the State property cannot be disposed of in the manner it has been done now. Therefore, it is not possible to hold that the sale of 2,000 metric tonnes of sandal sapwood made in favour of

respondents 5 and 6 disregarding the interest of the State revenue can be sustained.

11. As far as the mandamus sought by the petitioner-Appellant to direct the State Government to dispose of 4,000 metric tonnes of sandal sap-wood by way of public auction or in the alternative to sell the same to the petitioner-appellant is concerned, we are of the view that no such mandamus need be granted. It is one thing to challenge the validity of the decision of the State Government and it is another thing to seek a direction to the State Government to sell its property in a particular manner. It is open to the State Government to dispose of sandal sapwood or not to dispose of it. In the event it decides to dispose of it, the same has to be done only in accordance with law, governing disposal of State property, keeping in view the best interests of the State revenue. Therefore, we are of the view that the mandamus sought for by the petitioner-appellant need not be granted.

12. In the view we take regarding the validity of the Government order dated 18.12.1992, the State Government, if it decides to dispose of sandal sapwood has to dispose of the same either by way of public auction or at the price fixed with the eligibility criteria or the norms for disposing of the same. In the event the State Government decides to dispose of the sandal sapwood by way of public auction, petitioner-appellant, viz., the President, Bangalore Agarbathi Raw Materials Manufacturers' and Millers' Co-operative Society will also be entitled to participate in the auction as the State Government in the case of sale of sandal wood has offered it for sale by public auction as per the notification published in Salem District Gazette Extraordinary dated 27th November, 1992, bearing Roc. 14156/92 dated 11.11.1992 to one and all. In case the State Government decides to sell at the price fixed on prescribing eligibility criteria or norms and if the petitioner-appellant satisfies such criteria or norms irrespective of the impugned order dated 28th February, 1993 which is challenged in Writ Petition No. 4994 of 1993, it would be entitled to seek allotment of sandal sapwood. Therefore, we are of the view that as the Government order dated 28.2.1993, does not dispose of the sandal sapwood, it need not be quashed. The observations made by us sufficiently safeguards the interest of the petitioner. As and when the State Government decides to dispose of sandal sapwood, it would be open to the petitioner to seek for allotment of the same or participate in public auction, irrespective of the impugned order dated 28.2.1993.

13. For the reasons stated above Writ Appeal No. 42 of 1993 arising out of Writ Petition No. 454 of 1993 is allowed. The order dated 8.1.1993 passed by the learned single judge dismissing that writ petition is set aside. The Government Order bearing No. 1-D 128 dated 18.12.1992 disposing of 2,000 metric tonnes of sandal sapwood in favour of respondents 5 and 6 is quashed. The other Writ Appeal No. 43 of 1993 arising out of Writ Petition No. 355 of 1993 is dismissed. Writ Petition No. 4994 of 1993 is dismissed. However it is made clear that irrespective of the order dated 28.2.1993 rejecting the request of the petitioner

for sale of 1,000 metric tonnes of sandal sapwood, it would be open to the petitioner to participate in the public auction or to apply for allotment in the event the sandal sapwood is proposed to be disposed of on prescribing the eligibility criteria or the norms by the State Government. In the facts and circumstances of the case, there will be no order as to costs.