

(1971) 06 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No's. 6061 to 6066 of 1969, 859, 872 to 882, 1149, 1241, 1316 to 1318, 1346 to 1376, 1737, 1916 to 1918, 2523 to 2527 and 4998 of 1970 and 1112 to 1126 and 1128 to 1130 of 1971

C. Rangappa Lachmiah and Others

APPELLANT

Vs

The Range Forest Officer, Raichur and Others

RESPONDENT

Date of Decision : 25-06-1971

Acts Referred:

Karnataka Forest Act, 1963 — Section 50, 54 (3)

Mysore Forest Rules, 1969 — Rule 163, 163 (1), 163 (2), 164

Citation : AIR 1972 Kar 76

Hon'ble Judges : S.R. Range Gowda, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : M.R. Achar, T.P. Naik, H.K. Vasudeva Reddy and K. Shivashankar Bhat, for U.L. Narayana Rao and M. Rama Jois, for the Appellant; R.N. Byra Reddy, Government Advocate and H.R. Venkataramaniah, High Court Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Chandrashekhar, J.—In these petitions under Article 226 of the Constitution, the common question of law that arises for determination, is whether a person who had been running a saw mill before the Mysore Forest Rules, 1969, (hereinafter referred to as the Rules) came into force should take a licence under the rules in order to continue to run such saw mill.

2. In W. Ps. Nos. 6061 to 6066 of 1969; 859 872 to 882; 1316 to 1318; 1346 to 1376; 2523 to 2527; and 4993 of 1970, the petitioners have prayed for quashing the notices issued to them by the Forest Authorities requiring them to obtain such licences. Those petitioners have also prayed for a mandamus directing the Forest Authorities not to compel them (the petitioners) to obtain such licences. In W. Ps. Nos. 1149 and 1241 of 1970, in addition to similar prayers, the petitioners have prayed for striking down Rules 163 and 164 of the Rules as being ultra vires of Section 50 of the Mysore Forest Act. 1963. (hereinafter

referred to as the Act), and as being violative of clauses (g) and (f) of Article 19(1) of the Constitution, while in W. Ps. Nos. 1112 to 1126 and 1128 to 1130 of 1971 the petitioners have prayed for quashing Rule 163 as invalid. In W. Ps. 1737 and 1916 to 1918 of 1970, the petitioners have prayed for striking down clause (k) of Section 50 (2) of the Act, Rules 163 and 164 and forms 43 and 44 appended to the Rules.

3. In the new State of Mysore there was no uniform law relating to forests and forest produce. Different Acts and Rules were in force in different areas of the State. Such uniform law was brought about by the Mysore Forest Act, 1963, which came into force on 1-1-1969. In exercise of the powers conferred by Sections 30, 33, 38, 50, 59, 97, 101 and 102 of the Act, the Government of Mysore made the Rules which came into force on 27-3-1969.

4. The relevant parts of Section 50 which confers power to make rules to regulate transit of forest produce, read:

50. Power to make rules to regulate transit of forest produce:

(1) The control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest produce in transit by land or water, is vested in the Government and it may make rules to regulate the transit of all timber and other forest produce.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) ** ** *

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(k) prohibit absolutely or subject to conditions within specified local limits. the establishment of saw pits, saw mills, or any other sawing contrivance, and the converting, cutting, processing, distilling, storing, burning, concealing marking or super marking of timber or other forest produce, the altering or effacing or any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

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5. Sub-section (3) of Section 54 empowers provision being made by rules for punishment of persons guilty of contravention of the rules made under that section. The relevant parts of Rule 163 read:

163. Control of private saw pits, saw mills of any other sawing contrivances,--

(1) No saw pit or any other hand-sawing contrivance for cutting or converting timber shall be established within the limits of any reserved forest, protected forest or district forest or within 2 kilometers of such limits or within the areas

specified below, without obtaining a licence from the concerned Range Forest Officer :--

1. Shimoga District.
2. Chickmagalur District.
3. Coorg District.
4. South Kanara District.
5. North Kanara District. 6. Hassan District excluding Channarayapatna and Holenarasipur Taluks.
7. Khanapur Taluk of Belgaum District.
8. Khalagatige, Hangal, Shiggaum and Dharwar Taluks of Dharwar Dist.
9. Sandur and Kudligi Taluks of Bellary District.
10. Chincholi Taluk of Gulbarga District.

(2) No person shall establish a saw mill or erect machinery or plant or any ether sawing contrivance other than those specified in Sub-rule (1) for cutting or converting of timber, anywhere in the State, without obtaining a licence from the concerned Divisional Forest Officer.

(3) Application for grant or renewal of licence shall be made to the concerned Forest Officers in such form as the Chief Conservator of Forests in Mysore may, by notification in the official Gazette, prescribe.

6. Rule 164 which sets out the duties of the licensee, reads:

164. Duties of the licensee.-

(1) No licensee shall undertake sawing of timber belonging to other persons on job work, unless he is satisfied about the bona fides of such timber by examining the connected pass or way permit and the marks on the timber. If he suspects the bona fides of the timber, he shall detain the timber and immediately report the fact to the nearest Forest or Police Officer for taking further action.

(2) The licensee shall stack the timber of other persons received by him for sawing on job-work separately, both before and after it is sawn.

(3) Every licensee shall maintain, registers in Forms 43 and 44 and produce the same for check when demanded by any Forest Officer not below the rank of a Forester.

7. Rule 165 provides for penalty for contravention of the provisions of certain rules including Rules 163 and 164. Such penalty includes punishment with imprisonment for a term which may extend to six months or a fine which may

extend to Rs. 500 or with both.

8. Saw mills are required to maintain registers in Forms 43 and 44 appended to the Rules.

9. It is common ground that the petitioners had started saw mills and had been running them even prior to the coming into force of the Rules on 27-3-1969.

10. Learned counsel for petitioners contended that both Sub-rule (1) and Sub-rule (2) of Rule 163 should be construed as requiring a person who intends to establish a saw mill to take a licence and to get it renewed from time to time, and that there is nothing in Rule 163 which requires a person who has already established a saw mill before the rules came into force, to take a licence or to get it renewed from year to year.

11. Learned counsel for petitioners urged that both Sub-rules (1) and (2) are prospective in their application and that the words "no saw pit or any other hand sawing contrivance for cutting or converting timber shall be established" occurring in Sub-rule (1) of Rule 163 and the words "no person shall establish a saw mill or erect a machinery or plant or any other sawing contrivance" occurring in Sub-rule (2) of that Rule, can have application only to a saw pit or saw mill or contrivance that may be established or erected in future i. e., after the Rules came into force and not to one which was established or erected prior to the coming into force of the Rules.

12. On the other hand, the learned Government Advocate contended that Sub-rules (1) and (2) of Rule 163 are applicable even to saw mills, saw pits and sawing contrivances which had been in existence when the Rules came into force. According to him, the word "establish" connotes a continuing activity or running saw mills etc., and not merely the initial step of setting up saw mills etc. He referred to Shorter Oxford English Dictionary in which the several meanings of the word "establish" are given as follows:

"To render stable or firm; to fix, settle, institute or ordain permanently; to set up on a secure basis; to found; to place in secure or permanent position; to set up in a business."

13. However wide a meaning is given to the word "establish", it cannot go beyond setting up permanently or on a secure or stable basis. Once a saw mill is set up on a permanently or stable or secure basis, the running of it cannot be said to fall within the meaning of the word "establish".

14. The learned Government Advocate also relied on the decision in *Re: Mead; Public Trustee v. Mead* (1918) 88 LJ Ch 86. There, the testator gave trustees power to make advancement to his son "for the purpose of establishing him in a business or enabling him to become a partner in any business whether established or not." Dealing with the question whether the words "establishing in a business" meant only starting a new business, that is what Swinfen Eady, M. R., who spoke for the court of appeal, said:

"In my opinion, the view that this clause is limited to giving money to the son to start him in business, as distinguished from strengthening and confirming and establishing in a business in which he is already concerned, is erroneous. The advance is not to be for the purpose of starting him in business. It is to be for the purpose of establishing him in business, and it extends as well to establishing in a business in which he is already engaged and concerned. In fact, in the ordinary way it would be more prudent that the son should have shown by his capacity and fitness for the particular business in which he has already gained a footing that it is desirable that he should have some further capital so that his position therein may be more firmly established and rendered secure and settled."

15. In the light of the above observations, the word "establish" has to be understood as including strengthening or confirming a thing that has already been started. Even so, the word "establish" cannot be understood to include continuing to operate a thing that has already been set up on a permanent secure or stable basis.

16. The learned Government Advocate next sought to derive assistance from the construction of the words, "shall employ" by the Supreme Court in *The Central Bank of India Vs. Their Workmen*, . The relevant part of Section 10 of the Banking Companies Act, 1949, prior to its amendment in 1956, was in these terms:

10 (1) No Banking Company-

(a) shall employ or be managed by a managing agent, or

(b) shall employ any person--(i) who is or at any time has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is or has been convicted by a criminal court of an offence involving moral turpitude:

17. The question before the Supreme Court was whether the expression "shall employ" means and includes the continuing employment of persons. The Supreme Court said that it did include, as otherwise the very purpose of that Section would be defeated. The Supreme Court explained its reasoning as follows:

"Take for example, the case of an insolvent. The Section says that no banking company shall employ any person who is or at any time has been adjudicated insolvent. Suppose that at the time the bank employs a person, he has not incurred any of the disqualification mentioned in Section 10; but subsequently there is an order of adjudication against him and he is adjudicated an insolvent. The section obviously means that such a person can no longer be employed by the bank. If sub-sequent disqualification is not within the mischief of the section, then the very purpose of the section which must be the safety and well-being of

the bank will be rendered nugatory. We must, therefore, hold that the expression "shall, employ a person in Section 10 means and includes "shall have in employment"....."

18. We think there is a material difference between the word "employ" and the word "establish". The word "employ" may ordinarily mean not only the act of appointing a person but also continuing or retaining him in employment. On the other hand, the word "establish" does not in our opinion, denote a continuing act. Once a thing is set up or at any rate, set up on a sound, stable or permanent basis, the establishment of that thing is completed. The expression "establish a saw mill" does not, in our opinion, include continuing to operate it after it has been set up on a sound, stable or permanent basis. In our opinion, the aforesaid observations of the Supreme Court in construing the word "employ", cannot be of any assistance for construing the word "established".

19. Alternatively, the learned Government Advocate contended that if on a literal or grammatical construction, the words "establish a saw mill" do not include running a saw mill that has already been started or set up on a sound and permanent basis, we should depart from such literal or grammatical construction or Sub-rules (1) and (2) of Rule 163 and give a wider meaning to the words "establish a saw mill" in order to avoid frustration of the regulatory provisions contained in Rules 163 to 165. According to the learned Government Advocate, the object of Rules 163 to 165 is to regulate the activities of saw mills, etc., so as to prevent smuggling of timber or use of smuggled timber in such saw mills, etc., and that such object would be defeated if a large number of saw mills existing when the rules came into force, are not required to take licences and to abide by the conditions of licensee. The learned Government Advocate added that It could not have been the intention of the rules making authority to exclude such a large number of established saw mills from the purview of licensing provisions, especially when the rules under the Mysore Forest Act, 1900, (which was repealed by the Act) provided for saw mills taking licences.

20. The learned Government Advocate invited our attention to the following statement of law in Craies on Statute Law, 6th Edition, page 87:

".....If a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a court of construction to consider the state of law at the time the Act was passed, with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation, or whether it may not be desirable to put upon the language used a secondary, or restricted meaning, or perhaps to adopt a construction not quite strictly grammatical."

21. But in the same book, it has also been stated that where the words of an Act of Parliament are plain, the court will not take any alteration in them because injustice may otherwise be done- Reference has also been made therein to the following observations of Viscount Simon who delivered the judgment of AIR

1945 48 (Privy Council)

"Again and again this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injuries or otherwise, which may follow from giving effect to the language used."

22. It is difficult to say that if Sub-rules (1) and (2) of Rule 163 are construed as being applicable only to saw mills etc., to -be established after the Rules came into force, those sub-rules would be rendered nugatory or that absurd or strange consequences would follow; those sub-rules would still apply to saw mills etc., established after the Rules came into force, though the utility of those sub-rules to prevent smuggling of timber may thereby be considerably diminished. There does not appear to be any compelling reason to depart from the literal or grammatical construction of those sub-rules.

23. If the rule-making authority intended that the requirements of obtaining licences and getting them renew-ed year by year, should apply to saw mills existing on the date of the coming into force of the Rules, it is reasonable to expect that the rule-making authority would have followed the well-known legislative pattern adopted where licensing provisions are made applicable to existing industries, trade or other activities. To illustrate the point we may refer to Sub-section (1) of Section 6 of the Rice Milling Industry (Regulation) Act, 1958, and Sub-section (1) of Section 10 of the Industries (Development and Regulation) Act, 1951.

24. Sub-section (1) of Section 6 of the Rice Milling Industry (Regulation) Act, 1958, reads:

6. Grant of licences: (1) any owner of an existing rice mill or of a rice mill in respect of which a permit has been granted u/s 5 may make an application to the licensing officer for the grant of a licence for carrying on rice-milling operation in that rice mill."

25. Sub-section (1) of Section 10 of the Industries (Development and Regulation) Act, 1951, reads:

10 (1) The owner of every existing industrial undertaking, not being the Central Government, shall, within such period as the Central Government may, by notification in the Official Gazette, fix in this behalf with respect to industrial undertakings generally or with respect to any class of them, register the undertaking in the prescribed manner.

26. In the absence of any express provision in S-rules (1) and (2) of Rule 163 requiring existing saw mills etc. to apply for licences and to get them renewed, it is reasonable to construe those sub-rules as not being applicable to existing saw mills, saw pits, and other sawing contrivances.

27. There is yet another reason why Sub-rules (1) and (2) of Rule 163 should be held as not applicable to existing saw mills etc., in Sub-section (1) of Section 10

of the Industries (Development and Regulation) Act, a period as might be fixed by the Central Government, was allowed to industrial undertakings existing when that Act came into force, for being registered under that Act. But neither Sub-rule (1) nor Sub-rule (2) of Rule 163 provides for any period, after the coming into force of the Rules, within which persons running existing saw mills etc., can apply for licences. If Sub-rules (1) and (2) of Rule 163 should be construed as being applicable to existing saw mills also, the following consequence will ensue: A person lawfully running a saw mill up-to 27-3-1969 (on which date the Rules came into force) could not have applied for a licence under Rule 163 and obtain it at the commencement of the 27th day of March 1969. His not having such licence immediately after the midnight between the 26th and the 27th day of March 1969, would amount to contravention of the provisions of Rule 163 and he would be liable for penalty under Rule 165 for such contravention.

28. A construction which leads to such absurd and manifestly unjust result, should be avoided unless the language of Sub-rules (1) and (2) of Rule 163 clearly and unambiguously compels such construction.

29. For the reasons stated above, we hold that the obligation to take a licence under Sub-rules (1) and (2) of Rule 163, is not applicable to a saw mill, saw pit or other sawing contrivance existing on the date when the Rules came into force.

30. Since all these petitioners had been running saw mills which had been established before the Rules came into force, there is no obligation on them to take licences under Rule 163. Rule 164 which imposes certain duties on licensees, has also no application to them. Rule 165 which imposes certain penalties for contravention of Rules 163 and 164, has also no application to them. In that view, it becomes unnecessary to consider the reasonableness of restrictions imposed by the licence. It is also unnecessary to go into the validity of clause (k) of Sub-section (2) of Section 50 of the Act, of Rules 163 and 164 of the Rules and of Forms Nos. 43 and 44 appended to the Rules.

31. In the result, we quash notices or memos (Exhibit A) issued by the Forest Authorities to the petitioners in W. Ps. Nos. 6061 to 6066 of 1969; 859; 872 to 882; 1149; 1241; 1316 to 1318; 1346 to 1376; 2523 to 2527; and 4998 of 1970; 1112 to 1126 and 1128 to 1130 of 1971. We also issue a mandamus restraining the Forest Authorities from compelling the petitioners to apply for and to obtain licences under Rule 163 and from enforcing the provisions of Rule 164 in regard to the petitioners, so long as Rule 163 stands as it now is.

32. In the circumstances of the case, we direct the parties to bear their own costs.