

(1990) 12 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1679 of 1987

Hakim and Co.

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 26-12-1990

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 2
Andhra Pradesh Forest Produce Transit Rules, 1970 — Rule 3, 5
Railways Act, 1989 — Section 77B

Citation : AIR 1991 AP 249 : (1991) 1 ALT 383

Hon'ble Judges : Yogeshwar Dayal, C.J; Syed Shah Mohammad Quadri, J

Bench : Division Bench

Advocate : Noushad Ali, for the Appellant; Standing Counsel for Railways and Government Pleader for Excise and Forests, for the Respondent

Judgement

1. This is an appeal arising out of the judgment of a learned single Judge dated 29-10-1987. The learned single Judge dismissed the writ petition filed by the petitioner, wherein the petitioner prayed for a writ of mandamus or any other appropriate writ or direction to the Railway authorities and the Government of Andhra Pradesh represented by the Chief Conservator of Forests, to accept the consignment of Rosa Extract Perfume (otherwise as Rosa Oil) booked by the petitioner from Nampally Railway Parcel Office to the State of Maharashtra by exercising the authority vested in them instead of illegally refusing to accept the consignments referring to Circular No. CC-285-Dev-8-83-DRM"s/C/BG/Office, Secunderabad, dated 5-8-1983.

The impugned circular reads as follows:--

"SOUTH CENTRAL RAILWAYS,

No. CC-285-Dev-8-83 DRM"s/ C/ BG/ Office, SC.

Date: 5-8-1983.

Sub:-- Transportation of Rosa Oil.

It is reported that Rosa Oil is being booked to various places like Bombay without valid permit issued by the Forest Department. The loading of Forest Products should be as per S. 77B of the Indian Railways Act (Second Schedule).

Please note and notify staff concerned accordingly and ensure that Rosa Oil is not accepted without valid permit from the Forest Department. Also issue instructions to the staff concerned to keep a careful watch against misdeclaration.

Please acknowledge receipt of this letter.

Sd. x x x x x For DRM/BG/SC."

2. In the writ petition we are only concerned with the authority to demand to produce valid permit being got issued from the Forest Department. We are not concerned here with the loading of forest products as per S. 77B of the Indian Railways Act. The only question is whether the permit is required from the Forest Department before the consignment of Rosa Oil before it is transported by the Railways.

3. The petitioner is a firm dealing in perfumes and supply of concentrated perfume extract from flowers to various States. One such perfume is Rosa Extract Perfume which is mostly used in the manufacture of soaps, powders, etc., apart from using it as a base in the preparation of various other perfumes. The Rosa Extract Perfume sealed in drums is packed in the baskets to be despatched from South Central Railway to various States all over India.

4. The case of the petitioner is that on 1-1-1983 and 24-1-1983 Rosa Extract Perfume, packed in baskets, was booked by him for transportation to Dadar, Bombay V.T. and Byculla from Nampally Railway Station, Hyderabad.

5. The Chief Parcel Supervisor, Nampally Station (the 3rd respondent) refused to receive the consignments for transportation and endorsed on the forwarding note that the R.P.P. Inspector, C.C.S. (Spl. Cell) S.C. instructed not to book without permit from Maharashtra Government. When the petitioner booked a fresh consignment of the same product on 22-8-1983, the 3rd respondent again refused the consignment and endorsed on the forwarding note that the consignment was refused as prohibited without the permit from the Forest Department. In support thereof he relied on the aforesaid circular dated 5-8-1983. The petitioner, therefore, filed the writ petition to challenge the illegal refusal of the 3rd respondent from accepting the consignment on the ground of want of permit for transportation from the Forest Department.

6. It is also stated in the writ petition that as a matter of fact the Forest Department auctions the Rousa Grass every year and grants a permit to the contractors. The contractors in turn extract the oil from the Rousa Grass and the said oil is purchased by the petitioner in open market to sell the same without restriction either in this State or to transport it to other States. This business is going on for the last 30 to 40 years. It is submitted that neither the Andhra Pradesh Forest Act nor any other law in force prohibits the sale of Rosa Oil or its

transport.

7. The learned single Judge has referred to the provisions of the Andhra Pradesh Forest Act, particularly S. 2(g), and as also referred to the Andhra Pradesh Forest Product Transit Rules, 1970. R. 3 of the Andhra Pradesh Forest Produce Transit Rules, 1970 (hereinafter referred to as "the Rules"), contemplates that no forest produce shall be moved into or from or within the State by land or water, unless such produce is accompanied by a permit therefore issued under R. 5 and produced for check immediately on demand. The question, therefore, straightway turns on the question whether the article in dispute were sought to be despatched as "forest produce". The Rules do not define "forest produce", but define only "forest produce in transit". But the term "forest produce" is defined in the Andhra Pradesh Forest Act, 1967 (Act 1 of 1967), hereinafter referred to as "the Act". S.2(g) defines the expression "Forest Produce", which reads as follows:

"2.(g) "Forest produce" includes-

(1) the following whether found in, or brought from a forest or not, that is to say --timber, bamboos, charcoal, rubber, cactus, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, myrobalans, tunkia leaves, rousa grass, rauwolfia serpentina, adda leaves and gum.

(2) the following when found in or brought from a forest, that is to say-

(i) trees, such leaves, flowers and fruits as may be prescribed and all other parts or produce not hereinbefore mentioned of trees;

(ii) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;

(iii) wild animals, wild birds, skins, tusks, horns, bones, silk cocoons, honey, wax and all other parts or produce of animals and birds;

(iv) peat, surface soil, rock and minerals (including limestone and laterite), mineral oil and all products of mines or quarries; and

(3) Such other produce as may be prescribed."

8. The learned single Judge took the view that the produce "Rosa Oil" being produced from Rousa grass, comes within the definition of "forest produce" and as a result, it requires the permit to be transported under the aforesaid Rules; and accordingly dismissed the writ petition.

9. The petitioner being dissatisfied, has come up by way of the present appeal.

10. Sri Noushad Ali, the learned counsel for the appellant, submits that the product in dispute, though prepared from Rousa grass, is not a "forest produce" within the meaning of S.2(g) of the Act and thus it is not a forest produce, for purposes of the Act and the Rules.

11. We have already reproduced above the definition of "forest produce". It is

true that the definition uses the word "includes" as opposed to the expression "means" or as opposed to the expression "means and includes". But the submission of the learned counsel for the appellant is that the expression really is not used as a word of extension and in the context and the reference such expression is used in the sense of "means", and in that sense it is not a word of extension out, of limitation; it is exhaustive of the meaning which must be given to the expression "forest produce" used in the aforesaid sub-section i.e., 2(g). In support of this contention the learned counsel relies on a decision of the Supreme Court in *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, .

Before we refer to the decision it is useful to analyse the definition with which we are concerned, viz., S.2(g) of the Act. Though the definition "forest produce" refers to the expression "includes", it is divided into three broad categories:--

- (i) Whether found in, or brought from a forest or not (sub-clause (1)),
- (ii) when found in or brought from a forest (sub-clause (2)) and
- (iii) such other produce as may be prescribed (sub-clause (3))

The 1st category mentions various articles including wood, rubber, charcoal, wood-oil, resin, natural varnish, bar..... rousa grass..... In the 2nd category not merely trees but also "such leaves, flowers and fruits as may be prescribed and all other parts or produce not hereinbefore mentioned of trees" are mentioned. The second part of this category also includes plants which are not trees. Part (iii) of sub-clause (2) of S. 2(9) includes wild animals, wild birds, skins, etc., and part (iv) of sub-clause (2) includes even surface soil, rock and minerals, etc. The last category mentions such other produce as may be prescribed. It can thus be noticed that the definition includes not only such produce which is normally referred to as forest produce, but also various products which are not normally referred to as forest produce. Added to that is the power given to the State Government to prescribe such-produce by way of rules. Even those articles specified by way of rules can also come under the definition of "forest produce". It appears to us that in this context the definition of "forest produce" though it uses the expression "includes", is exhaustive. It is the common case that the item in dispute is not covered by sub-clause(2) or sub-clause, (3) of S.2(g) of the Act, that is to say, it is not covered by the 2nd and 3rd categories.

12. Reliance is placed on behalf of the Railways only on the 1st category. In the 1st category, though timber, bamboos, rubber as well as wood-oil are mentioned along with so many other types of wood, leaves and grass, yet the oils are not mentioned. Then the question is whether the Rosa Extract Perfume which was sought to be transported can be said to come under the 1st category. It is the common case that Rousa grass was purchased by the forest contractors; thereafter Rosa oil was extracted by the forest contractors after chemical treatment of Rousa grass and after further chemical treatment by the petitioner the product, viz., Rosa Oil, is sought to be transported. Such a product does not

come within the 1st category. We are of the view that the term "includes" used in the definition of "Forest Produce" (Sec. 2(g)), in the context really means "means and includes" and in support of this view we draw assistance from the decision of the Supreme Court cited by Sri Noushad AH.

In the case before the Supreme Court the question was whether the manufacture of Mangalore pattern roofing tiles fell within Entry 22 of Part I of the Schedule to the Minimum Wages Act, 1948. Entry 22 reads as follows:--

"Entry 22 :--

Employment in potteries industry.

Explanation:-- For the purpose of this entry potteries Industry includes the manufacture of the following articles of pottery, viz.,:--

- (a) Crockery,
- (b) Sanitary appliances and fittings,
- (c) Refractories,
- (d) Jars,
- (e) Electrical accessories,
- (f) Hospital ware,
- (g) Textile accessories,
- (h) Toys,
- (i) Glazed tiles."

Though the expression "includes" is used in the Explanation to Entry 22, the Supreme Court was confronted with the question whether the term "includes" has been used as a word of extension or the word has been used in the sense of "means". The Supreme Court took the view that the Explanation was added to the entry not by way of abundant caution because the list included objects which were well recognised as articles of potteries. It was held that the expression "includes" was used to mean "means and includes" because certain items were mentioned, which in ordinary parlance would not have come within the meaning of the expression "potteries industry."

13. In the present case before us, the aforesaid reasoning given by the Supreme Court applies. Besides, in the present case sub-clause (3) of Section 2(g) makes it totally exhaustive because the meaning can be extended by the rule-making authority from time to time. As at present, the product of Rousa grass is not treated as part of the definition. In this context we may also refer to the decision of a Division Bench of this Court in Kangnudi Industrial Works (P.) Limited, Kuppam v. Government of Andhra Pradesh, 1987 (2) ALT (Notes on Recent cases) 98, wherein Raghuvir, J. (as he then was) and Rama Rao, J. took the view

that the preparation of sandal-wood oil involves manufacturing process in the factory and the sandal-wood oil cannot be obtained straight from the tree and, therefore, sandal-wood oil cannot be brought within the fold of forest produce as defined in Section 2(g) of the Act and consequently it does not require transit permit.

14. For all the aforesaid reasons, we are of the view that in the present instance the expression "includes" is used really to mean "means and includes" and not "includes" as generally understood. We are thus of the view that the consignment in dispute is not a consignment of forest produce and no permit or certificate is required from the Forest Department for transit of the goods in dispute, and to that extent the impugned circular is ultra vires the Rules and the respondents are issued a writ of Mandamus directing them to accept the consignments without insisting on the production of a permit from the Forest Department in respect of the goods in dispute.

15. The writ petition is accordingly allowed. The order of the learned single Judge is set aside and the appeal is allowed. Parties are directed to bear their own costs.

16. Appeal allowed.