
(1996) 12 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 629 of 1991

Ishwar Dutt and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-12-1996

Acts Referred:

Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 — Section 4, 6, 6(1), 7
Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982 — Rule 5, 5(2)

Citation : (1997) 1 ShimLC 480

Hon'ble Judges : M. Srinivasan, C.J; L.S. Panta, J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; Inder Singh, General for Respondent No. 1 and N.K. Sharma and I.D. Bali for Respondents No. 2 and 3, for the Respondent

Judgement

M. Srinivasan, C.J.—Though the first prayer in the writ petition is to declare Sections 4 and 7 of the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 as arbitrary, discriminatory, unconstitutional and against the principles of common law and natural justice and to quash the same, in the course of arguments, learned Counsel has stated that what all he wants in this case to direct the State Government to implement strictly the provisions of the said sections. However, he pressed for consideration the second prayer in the writ petition, in which he seeks to have the notification which is filed as Annexure P-II dated 3-4-1991 issued by the Government as void and to quash the same. The third prayer is also pressed by learned Counsel for the Petitioners.

2. In so far as the first prayer is concerned in the form it is now presented to us in the course of arguments, we are of the opinion that it is to be granted in view of the fact that the Act was passed in 1982, but the State Government has not chosen to adhere to the provisions of the Act strictly. No doubt, Advisory Committees were constituted in several Divisions in the year 1984 under different notifications for each Division. That constitution was only for the years

1984-85 to 1986-87. Thereafter, no Advisory Committee was constituted by the Government for each Division, as required by Section 6(1). But pursuant to the directions of this Court in C.W.P. No. 548 of 1994, *Beli Ram v. State of Himachal Pradesh and Ors.*, an Advisory Committee was constituted for Nurpur Division. So also an Advisory Committee was constituted pursuant to the directions given by this Court in C.W.P. No. 526 of 1989, *Shiv Ram v. State and Ors.*, but that Committee was a State Level Committee and not a Committee for a Division, as contemplated by Section 6 of the Act. Thus, it is clear that the State Government has not performed its statutory duties enjoined by Section 6 of the said Act. In the circumstances, we direct the State Government to constitute Committees for each Division in which the forest produce is grown or found. Such constitution shall be effected before 30th January, 1997. No doubt, the section says that the State Government shall from time to time constitute such Advisory Committees, but the section does not restrict the power of the State Government to constitute such Committees for a period of three years only. It is open to the State Government to constitute the Committees for a longer period, so that there is no necessity to constitute Committees again and again after short intervals.

3. We also take notice of Rule 5 of the Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982. Rule 5(2) provides for the composition of the Committee. According to the said Rule, the Divisional Forest Officer of the concerned Division, a representative of the Deputy Commissioner of the area, two Pradhans of the Gram Panchayats of the area due for felling under the 10 years felling programme and a representative of the agent shall be members of the Committee. As regards the agent, it is not now in dispute that the Forest Corporation is the agent which has to select its representative, who will be a member of the Committee. Thus, there will be no difficulty in constituting the Committees as such for the State Government. Considering the fact that the winter season has stepped in and the time at the disposal of the Government will be short, we are granting time, as prayed for by the learned Advocate General, till 30th January, 1997 for constitution of such Committees.

4 If the Committees are able to tender advice before 15th February, 1997 as regards the price to be fixed, the Government shall act under the main Section 7. If on the other hand, the Committees are not in a position to tender such advice by 15th February, 1997, the State Government may proceed to fix the price without consultation of the Committee on or before 15th April, 1997. But in all subsequent years, the State Government shall strictly follow the provisions in Section 7 and fix the price either in consultation with the Committee or without consultation of the Committee on or before 31st March every year. We make it clear that the constitution of the Committees as per the above direction and fixation of price by the Government can be only with respect to future years commencing from 1997-98.

5. As regards the notification, which is found in Annexure P-I 1, we do not find any merit in the contention urged by learned Counsel for the Petitioners. We are

not able to find out anything, which is contrary to the provisions of the Act or Rules or any provisions of the Constitution and the principles of natural justice. The economic system, which has been invoked and adopted by the Forest Corporation has been found by the Government to be enforceable and acceptable and on that basis, the notification has been issued. Section 7 of the Act contains two provisos. Under the first proviso, if the Committee fails to tender advice by the 15th of February proceeding the financial year, the State Government may proceed to fix the price without consultation of the Committee. That will arise only if there is a Committee and it fails to tender advice for fixing the price in different forest Divisions. The second proviso reads that the State Government through its authorised officer or agent may purchase the forest produce till the constitution of the Committees at a price mutually agreed upon between the parties to the sale. Under the second proviso, it is open to the State Government to fix the price even if there is no Advisory committee, under Sections 6 and 7 of the Act. It is only the said provision, under which the notification dated 3-4-1991 has been issued by the Government fixing the price for different forest produce. We do not find any illegality whatever in the said notification.

6. The said provision referred to the price mutually agreed upon between the parties to the sale. In this case, there is an agreement between the power agent of the parties and the Forest Corporation. Under the agreement, the party had agreed to the fixation of the price, as per the economic system, which was in vogue previously. The Government notification fixing the price at a particular rate says that if the price obtained under the economic system is higher that has to be paid. The Government notification says that whichever is the higher price it is to be adopted and paid for the trees in question. In such a situation, we do not find any illegality whatever in the notification dated 3-4-1991. Consequently, that contention fails.

7. As regards the third prayer, it is not possible for this Court to go into the disputed questions of facts. It is open to the parties to approach the Civil Court and make such a claim, as they may be entitled to in law. It is brought to our notice that as early as on 25-5-1996, a communication has been sent by the Forest Corporation to the two power agents of the Petitioner, namely, Sunil Kumar Sareen and Rama Nand that the price of trees was arrived at on a particular basis and all the relevant details were communicated to them in the form of two tabular statements. The communication also says that all the four instalments of royalty amounting to Rs. 20,69,910 had already been paid to the persons concerned. The economics of the concerned lots after sale of entire forest produce have been prepared, copy of which was annexed with the said communication and according to which nothing was payable to the said persons. We are informed by learned Counsel for the Forest Corporation that there was no reply to this communication and there was no protest whatever after this communication was sent to the Petitioners herein or agents. In such circumstances, it is not possible for this Court to decide the question as to whether the Petitioners are entitled to any more amount after the payments

received by them.

8. In view of the disputed state of facts, it is open to the Petitioners, if they want to claim any amount besides what has been paid to them, to approach the Civil Court and establish their claim in accordance with law.

9. With the, above observations, this writ petition is partly allowed and partly dismissed.

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