(1981) 11 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No. 5282 of 1981-A

Ismail Match Works, Feroke and Another APPELLANT

Vs

The Divisional Forest Officer, Palghat Division and Another RESPONDENT

Date of Decision : 17-11-1981

Acts Referred:
Kerala Forest Produce (Fixation of Selling Price) Act, 1978 — Section 3(2)

Citation : AIR 1982 Ker 145

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Advocate : C.R. Natarajan and M.K. Anandakrishnan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Chandrasekhara Menon, J.—The petitioners have entered into contracts with the Government through the Divisional Forest Officer, Palghat, agreeing to fell and collect the timber allotted to them for 1980-81 and to purchase them at the rates fixed in the agreement. Regarding the agreement what was said in the agreement was:--

"For supplies the value of soft wood will be realised at the rates specified in G.O.Ms. No. 462/80/AD dated 1-12-1980 for the species covered by the G.O. (subject to revision of Government) the revised rate proposed to Government in C.C.F.''s letter No. SP3-53934/78 dt. 21-10-78 and 5-1-79 or revised rate ordered by Govt. during the currency of the quota period, as specified in Appendix I......

42, The purchaser is liable to pay higher rates for the timber supplied against the quota if so ordered by Govt. consequent to the revision of rates in accordance with the Kerala Forest Produce (Fixation of Selling Price) Act, 1978, revision of quota rates etc,

43. The price for soft wood species covered by Kerala Forest Produce (Fixation of

Selling Price) Act, 1978 shall be payable by the allottees at the rates fixed in G.O.Ms. No. 462/80/AD dt. 1-12-80 and that the same shall be liable to revision when Government so ordered."

2. The petitioners point out that from 1st June, 1981, the rates effective from that date have been revised and the earlier notification superseded by a fresh notification G.O.Ms. No. 169/81/Forest dated 29-5-1981 (marked as Ext. P2). This notification has been published under the Kerala Forest produce (Fixation of Selling Price) Act, 1978, the Act for short, which according to the petitioners was enacted to ensure that forest produce is sold at reasonable rates and to provide for the fixation of the selling price of certain important forest produce. Section 3 of the Act states that the Government shall, before the end of each financial year, by notification published in the Gazette, fix the selling price of every forest produce for the following financial year. It also provides that the Government may, if they decide that it is necessary so to do, refix the selling price of any forest produce during the course of a financial year.

The selling price under the Act is fixed after following the procedure prescribed therein and consulting and considering the recommendations of an expert committee. At the time when the petitioners executed the agreements the notification issued under the Act in force was G.O. (MS) No. 462/80/AD dated 1-12-1980. For the year 1981-82 the rates effective from 1st June 1981 however has been revised and the earlier Government notification; superseded by a fresh notification of 29-5-1981. This fresh notification Ext. P21 would show that the price for standing timber at site for Vellapine, Punna and Pali covered by the agreement is Rs. 290, Rs. 280 and Rs. 290 respectively per cubic metre while the corresponding figure under the superseded notification was Rs. 484, Rs. 359 and Rs. 484 respectively.

3. The petitioners'' contention is that in view of the Act, they are liable to pay only as per the rates fixed in Ext. P2 in respect of the forest produce mentioned therein and covered by the agreement executed by them. According to them, the agreement provides for the price for soft wood species covered by the Act shall be payable by the allottees at the rates fixed in the notification of 1-12-1980 and that the same shall be liable to revision when Government so ordered. Petitioners'' case is both under the Act and under the agreement they are liable to pay only at the rates fixed under Ext. P2.

4. I think the petitioners have misunderstood the scope and ambit of the provisions of the Act. The Act is one to provide for the fixation of the selling price of certain important forest produce, for the prohibition of the sale of such forest produce at less than the price so fixed and for matters incidental or ancillary thereto. It will be useful to quote the preamble here.

"Preamble.-- Whereas it is necessary to safeguard the forest wealth of the State to the maximum extent possible;

And whereas the proper regeneration "and maintenance of the forests in the

States is not possible unless the forest produce is sold at reasonable rates and the proceeds thereof are utilised for such purposes;

And whereas the very existence of the forest depends on the proper regeneration and maintenance thereof;

And whereas forest produce particularly timber including bamboo and soft wood like eucalyptus is being sold at unreasonably low rates;

And whereas it is necessary for the conservation of the forests to provide for the fixation of the selling price of certain important forest produce, for the prohibition of the sale of such produce at less the price so fixed and for matters incidental or ancillary thereto."

Under Section 3, the Government shall, before the end of each financial year, by notification published in the Gazette, fix the selling price of every forest produce for the following financial year. Before fixing the selling price of any forest produce, the Government has to consult the committee and consider its recommendations. This committee has been defined in the Act as the expert committee constituted u/s 4 of the Act. Notwithstanding anything contained in the other provisions of Section 3, Government may, if they decide that it is necessary to do so, refix the selling price of any forest produce during the course of a financial year Provided that before refixing the selling price as such, Government shall consult the committee and consider its recommendations.

The committee which is constituted as per Section 4(1) of the Act shall, in making its recommendations, have regard to (a) the market price of the forest produce; (b) the cost of regenerating and maintaining the forest produce in cases where regeneration is necessary after selling the forest produce; and (c) such other matters as may be prescribed, Section 5 of the Act says that after the date of the publication of the notification under Sub-section (2) of Section 3, no forest produce shall be sold by the Government or any forest officer at a price which is less than the selling price of that forest produce. The sale of any forest produce in contravention of Sub-section (1) shall be null and void and shall not be enforceable in a Court of law. Section 7 of the Act says that ten per cent of the amount obtained by the sale of forest produce after the commencement of this Act shall, subject to such rules as may be made under this Act, be set apart for being utilised for the development of forest.

5. It is clear from the above provisions that this Act is only for the purpose of preventing the authorised officers of the Government from selling forest produce at a price which is below the price notified under Sub-section (2) of Section 3 . This does not prevent the Government or its authorised officers from fixing a higher price and realising the same.

In this view, I dismiss this O. P. I make no order as to costs.

