
(1986) 01 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 3629 of 1985

Itarsi Timber Merchants Association, Itarsi and another	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Forest Act, 1927 — Section 41
Madhya Pradesh Transit (Forest Produce) Rules, 1961 — Rule 27
Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 — Section 21

Citation : (1986) J LJ 671 : (1986) MPLJ 307

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.L. Saxena, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, Actg. C.J.

This petition is one of the several petitions in which challenge is made to the constitutional validity of provisions of the M.P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984 and the rules framed thereunder. Challenge is also made in some petitions to the validity of Rule 27 of the M.P. Transit (Forest Produce) Rules, 1961. The points urged in all the connected petitions are considered and decided here.

A brief reference may be made at the outset to the relevant statutory provisions in the background of which the questions raised in this batch of petitions have to be considered. The Indian Forest Act, 1927 is an Act to consolidate the law

relating to forests, transit of forest produce and the duty leviable on timber and other forest produce. The M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 makes provision for regulating in the public interest the trade of certain forest produce by creation of State monopoly in such trade and it applies to the

"specified forest produce" as defined in section 2(1) of that Act. All kinds of timber, though forest produce, is not "specified forest produce" and accordingly timber which is not "specified forest produce" within the meaning of the 1969 Act is not governed by that Act. The Indian Forest Act, 1927 does not apply to "specified forest produce" which is governed by the 1969 Act. Section 41 of the 1927 Act contains the rule making power to regulate transit of forest produce and clause (h) of sub-section (2) therein provides particularly for the rule making power to prohibit absolutely or subject to conditions within specified local limits the establishment of saw-pits, the converting, cutting etc. of timber. Section 42 provides the penalty for breach of rules made u/s 41. Section 76 confers additional rule making power to the State Government and one of the purposes mentioned therein is the preservation, reproduction and disposal of trees and timber. The M.P. Transit (Forest Produce) Rules, 1961 have been framed in exercise of this rule making power under the Indian Forest Act, 1927. Rule 3 regulates transit of forest produce by means of passes. Rule 17 deals with registration of property marks to be attached to timber. Rule 27 which has been challenged in some of the petitions prohibits conversion of timber within specified limits or the establishment of saw-pit for the cutting, converting or fashioning of timber without the previous sanction in writing of the specified forest officer. As earlier stated, the 1969 Act was enacted to provide for "specified forest produce" which does not cover all kinds of timber. In exercise of the rule making power conferred by section 21 of the 1969 Act the State Government has made rules known as M.P. Van Upaj (Vyapar Viniyaman) Kashtha Niyam, 1973. Rule 7 therein relates to registration of manufacturers, traders and consumers of specified timber. Sub-rule (4) of rule 7 requires every registered manufacturer, trader and consumer of the specified timber to maintain accounts of specified timber and submit returns to Divisional Forest Officer in the prescribed manner.

In addition to the above statutory provisions, M.P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984 has been enacted to make provisions for regulating in the public interest the establishment and operation of saw-mills and saw-pits and trade of sawing for the protection and conservation of forests and the environment. This Act has replaced an earlier Ordinance to the same effect and has been applied from 15th December 1983, the date on which the Ordinance had come into force. It has also received the assent of the President. Section 23 provides for the overriding effect of this Act over other laws relating to saw-mills and saw-pits. Section 24 provides for the savings in respect of ordinary operations of carpentry and any saw-mill or saw-pit owned by the State Government. In exercise of the rule making power given by section 22 of this Act, the State Government has framed the M.P. Kashtha Chiran (Viniyaman) Niyam, 1984 for the purposes of this Act.

Reference may now be made to the provisions of the 1984 Act and the rules framed thereunder. Section 2 of the Act in clause (f) defines "saw-mill" and in clause (g) defines "saw-pit". While saw-pit means a place where wood is sawn by manually operated saws, saw-mill means the plant and machinery used for

sawing with the aid of electrical or mechanical power. Section 4 lays down the requirement of a licence for establishing a saw-mill or a saw-pit and this requirement is also for operating the same where it was in existence from an earlier date. The proviso speaks of a deemed licence for the period of thirty days or the period during which the application is pending consideration. Section 5 provides for declaration of prohibited area within which no licence shall be granted for establishment of a saw-mill or a saw-pit. Section 6 provides for the grant, renewal, revocation or suspension of licence. It lays down that the licensing authority shall make the order of grant or refusal of the licence after enquiry and no order of refusal shall be passed without a hearing and the reasons in writing given in support of the refusal. Section 7 gives power of entry, inspection, search, seizure etc. of the premises. Section 8 requires the licensee to submit returns relating to the business of the saw-mill or saw-pit in the prescribed forms and in the prescribed manner. Section 9 lays "down the requirement of keeping of account of stock of wood in saw-mill and saw-pit. Section 10 prohibits electric connection etc. in any unlicensed saw-mill. Section 11 provides for an appeal to any aggrieved person against refusal to grant or renew a licence or its suspension or revocation and the appellate authority has also the power to stay the impugned order during the pendency of the appeal. Section 12 provides for confiscation of saw-mill etc. on the grounds mentioned. It also lays down the requirement of an enquiry after due notice to the owner of the property to be confiscated or seized. Power is also given to any forest officer not below the rank of a Conservator of Forests to revise the order of confiscation either suo motu or on application made for this purpose. Thereafter the person aggrieved has also the right of appeal to the District Court. Section 13 provides for penalties. Section 15 lays down that in case where wood, whether sawn or unsawn, is recovered from a saw-mill or saw-pit for which no valid licence exists, a presumption would be drawn that the saw-mill or saw-pit was in operation unless the contrary is proved. Rest are ancillary provisions some of which have already been referred. The rules framed under this Act are for carrying out the purpose thereof. Rule 3 deals with application for licence and sub-rule (6) therein specified certain factors which shall be particularly considered by the licensing officer for the purpose of deciding the application for licence.

At this stage, it would also be useful to mention the statement of objects and reasons for enactment of the M.P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984, which is as under:

With the increase of faster means of transport, high prices of timber and State monopoly timber trade of important tree species; illicit trade in timber has become lucrative and consequently the cases of illicit fellings are on the increase. The saw mills play an important role in aiding the unauthorised fellings. After conversion in the saw mills it is very difficult to prove that timber was brought illicitly. It is, therefore, proposed to curb this menace by regulating the operations of saw-mills whether power driven or worked manually.

Salient features of the Bill are as under:

(a) A licence shall be required for operation of an existing saw-mill or saw-pit or for establishing a new saw-mill or saw-pit. The Act shall not apply to ordinary operation of carpentry not involving saw-mill or saw-pit or to saw-mills or saw-pits of Government.

(b) The State Government is empowered to declare any area to be prohibited area in which no licence for saw-mills, saw-pits shall be granted.

(c) The stock of wood in saw-mill or saw-pit shall have to be properly accounted for. In case it is not done such stock shall be presumed to be liable to confiscation.

(d) No electric energy shall be consumed and no electric connection shall be installed in a saw-mill which has not obtained licence under this Act.

It is with this object in view that the impugned provisions have been enacted.

The first argument of learned counsel for the petitioners appearing in this batch petitions is about the legislative competence of the State Legislature to enact such a law. On behalf of the State Government reliance was placed on Entry 17-A in List III of the Seventh Schedule. According to learned counsel for the petitioners, this entry does not cover this enactment and, therefore, it is the Parliament which has legislative competence to make such a law in exercise of its residuary power. In our opinion, this objection cannot be sustained. The subject matter covered by Entry 17-A is "Forest." The word "forests" is wide enough to include trees even after they are felled and not merely standing trees within it, as held in a Full Bench decision of the Bombay High Court in Janu Chandra Waghmare and Others Vs. The State of Maharashtra and Others, on which reliance has been placed on behalf of the petitioners for supporting the contrary conclusion. We do not find any reason why the subject matter of this enactment cannot be covered within the wide meaning of the word "forests" used in Entry 17-A to describe its scope and content or for that matter even the preservation and conservation of forests. This is more so when no other entry has been pointed out in any list in the Seventh Schedule, the subject matter of which can cover this enactment. In view of the fact that ordinarily and naturally the expression "forests" used in Entry 17-A of List III is wide enough to cover the field of legislation pertaining to timber which is a "forest produce" as well as the preservation and conservation of the forests, we are unable to give a unduly restricted meaning to the word "forests" used in the entry as suggested by learned counsel for the petitioners. It was also urged that the enactment regulates the trade or sale etc. of timber and, therefore, it is not covered by this entry. We are unable to accept this contention. The enactment has as its object the prevention of illicit felling of timber and consequently the prevention and conservation of forests and the provisions made therein are intended to achieve this object by also providing for ancillary matters such as regulating the establishment and operation of saw-mills and saw-pits which facilitate this illicit

activity by conversion of the trees or timber therein. We have no doubt that the State Legislature was competent to enact such a law and there is no defect of lack of legislative competence in this behalf as urged on behalf of the petitioners. This contention is rejected.

The next contention on behalf of the petitioners was that the existing laws prior to the making of the 1984 Act and the rules thereunder contained sufficient provisions to prevent the activity of illicit felling of trees in the forest and to regulate the trade in timber on account of which this additional exercise was unnecessary. In our opinion, it is unnecessary to examine this contention at any length since this does not relate to unconstitutionality of the enactment. At best, this argument relates to the unwisdom of the legislation and not its unconstitutionality. It is sufficient to reproduce the words of Krishna Iyer J. in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, that "unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review."

The challenge made to the constitutional validity of Rule 27 of the M.P. Transit (Forest Product) Rules, 1961, may be disposed of at this stage. The argument of learned counsel for the petitioners is that Rule 27 is in excess of the powers conferred by section 41 of the Indian Forest Act, 1927. It is sufficient to refer to clause (h) of sub-sections (2) of section 41 which confers rule making power particularly to prohibit absolutely or subject to conditions within specified local limits the establishment of saw-pits and the converting, cutting etc. of timber. This is in addition to general rule making power contained in sub-section (1) of section 41 to regulate transit of forest produce. All that Rule 27 does is to prescribe that no saw-pit or similar machinery or plant for cutting etc. of timber shall be established within the prescribed limits without the previous sanction in writing of the prescribed officer. As already stated, section 41(2)(h) expressly confers this power to prescribe absolutely or subject to conditions such activity within the specified limits. It is, therefore, incorrect to say that Rule 27 is in excess of the power conferred by section 41 of the Forest Act, 1927. Learned counsel also contended that the expression "specified local limits" used in section 41(2)(h) refers to the area of local bodies and not any area outside it. The argument is mentioned only to be rejected since on its very face it is not tenable. The expression "specified local limits" used in section 41(2)(h) is not used with reference to area of any local authority or local body and in the context of regulating transit of forest produce, the area of any local body or local authority is obviously incongruous. The expression merely refers to the specified limits, whatever it be.

The main attack is to sections 4, 8, 9, 10 and 15 of the 1984 Act and Rule 3(6) of the Rules framed thereunder. Sections 8 and 9 lay down the requirement of submitting returns relating business of saw-mill or saw-pit and maintenance of account of stock of wood. With reference to the prescribed form it is contended that the requirement of maintaining such accounts is too onerous. We are unable

to accept this contention. No particular in the prescribed form is such which the licensee cannot keep or which is not relevant for maintenance of accounts of the business of timber done in the saw-mill or saw-pit. Looking to the high cost of timber, the particulars expected in the accounts cannot be called onerous since in transactions relating to timber they are essential particulars which even otherwise is likely to be kept by the persons carrying on that business. In fact, another argument on this point on behalf of the petitioners provides the answer to this contention. It was their argument that the requirements of the earlier existing laws were sufficient and this further requirement is a mere duplication. If that be so, no additional accounting is required to be done by them and all that is necessary is to fill the particulars they already have in these forms. At any rate, we are unable to hold that the requirement of maintenance of accounts and submission of accounts is in any manner onerous or too harsh as to make it either arbitrary to attract Article 14 or an unreasonable restriction so as to infringe the right given by Article 19(1)(g) read with Article 19(6) of the Constitution.

Challenge to section 4 of the 1984 Act is made on the ground that it violates Article 14. It is contended that the provision is arbitrary. Reference may be made in this connection to clause (6) of rule 3 of the 1984 Rules made thereunder which requires a licensing officer to consider specifically the matters enumerated therein while deciding the application for licence. These provisions are claimed to be violative of the right given by Article 14 of the Constitution. We are unable to accept this contention. Clause (6) of Rule 3 lays down certain factors which are all relevant for considering whether the applicant is a fit person to be granted the licence keeping in view the object for which the enactment has been made. These factors relate to the site of the saw-mill, availability of the wood in the area, connection of the saw-mill or saw-pit with illicit felling of the trees in the past and the conviction, if any, of the applicant for any forest offence of grave nature. These factors are not only relevant in the context but also provide guidelines to the licensing authority. There is no basis for treating them as arbitrary. Section 4 of the Act says that from the appointed day no saw-mill or saw-pit shall be established except according to a licence granted in this behalf and an existing saw-mill or saw-pit shall not continue operation without such a licence granted on application made within the prescribed period. It is further laid down that for the period of thirty days and thereafter the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence Under the Act and he is operating the saw-mill or saw-pit accordingly. This deeming provision takes care to avoid any hardship during the period of pendency of the application for grant of the licence. It is difficult to accept the contention that any of the provisions is either arbitrary or it imposes an unreasonable restriction on the right to carry on this trade or profession. Section 10 of the Act prohibits the giving of an electric connection or consumption of electricity in an unlicensed saw-mill. This provision is ancillary in order to prevent the working of an unlicensed saw-mill where the sawing

operation is carried on by electric power. Section 15 of the Act places burden of proof on the accused where wood, whether sawn or unsawn, is recovered from a saw-mill or saw-pit for which no valid licence exists to rebut the presumption that the saw-mill or saw-pit was not in operation. Such a burden being placed on the accused to prove the contrary when a prima facie case of commission of an offence is made out by the prosecution is a well known provision contained in several other enactments, for example, the Prevention of Corruption Act, and the validity of the same has been upheld in several decisions. It is sufficient to refer to a recent Division Bench decision of this Court in B. Johnson Vs. C.S. Naidu, wherein a similar provision in the M.P. Accommodation Control Act, 1961 was upheld as valid, relying on the settled position indicated by the decisions of the Supreme Court. Apparently it is for this reason that no serious challenge to this provision was made on behalf of the petitioners and this point was merely mentioned at the hearing.

We may also add that the provisions contained in the 1984 Act and the rules framed thereunder requiring an enquiry with opportunity to the applicant for the licence before deciding the application and reasons to be given for refusal, revocation or suspension of the licence; taking into account all relevant factors of which some are specified for deciding the application; similar provisions relating to confiscation of sawmill and other property; and provision for appeal in all such matters is sufficient to provide guidelines to the concerned authorities and to check exercise of arbitrary power by any of them. We are satisfied that no ground is made out to attack the constitutional validity of any of these provisions contained in the 1984 Act and the Rules framed thereunder as also Rule 27 of the 1961 Rules. The challenge to the constitutional validity of these provisions made in this entire batch of petitions is, therefore, rejected.

Now remain for consideration some of these petitions in which a challenge is made to the impugned orders on merits. It is common ground that the question of grant of licence for the period which has already expired need not be gone into at this stage since the only question of significance now is the grant of licence under these provisions for any subsequent period. Learned Deputy Advocate General made a statement that all applications made by any of these petitioners or any other applicants hereafter would be considered and decided on merits in accordance with law and according to the guide-lines laid down and that the same would not be rejected in any case merely because of refusal of licence on an earlier occasion to any of these applicants. This assurance given by the learned Deputy Advocate General on behalf of the respondents for disposal of all the pending applications for licence or those to be made hereafter by the petitioner or any other applicant render it unnecessary to examine the merits of the impugned order in each case. Similarly, where an appeal lies in accordance with the statute and that remedy has not yet been exhausted by the petitioners, there is no occasion to examine the impugned order on merits. In such cases, the remedy of appeal has to be resorted to by the petitioners and if the prescribed appeal is filed within a period of one month of the date of this order,

then the same shall be considered and decided in accordance with law treating it to have been filed within the prescribed period of limitation.

We may also mention that a challenge to the constitutional validity of the provisions of the M.P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984 on substantially the same ground has already been rejected by another Division Bench decision in Abdul Sattar Khan Vs. Divisional Forest Officer, (Vikas) South Seoni Forest Division, Seoni and Others, .

In view of the above, it is unnecessary to examine on merits any of the other petitions in this batch of petitions separately. Consequently, this petition and Misc. Petitions Nos. 383/82, 2017/84, 177/86, 6060/84, 2719/84, 2243/84, 1398/85, 1028/84, 1791/84, 1033/84, 1303/84, 1828/84, 3716/85, 2486/84, 1083/85, 2955/84, 2979/84, 240/85 and M.C.C. No. 235/85 are dismissed. No costs. Security amount, if any, be refunded to the petitioners.