

(1990) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4335 of 1988

Kailash Chandra Sharma and Another	APPELLANT
Vs	
State of Madhya Pradesh and Another	RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Madhya Pradesh Kashtha Chiran (Viniyaman) Adhiniyam, 1984 — Section 5

Citation : AIR 1991 MP 175 : (1991) 36 MPLJ 550 : (1991) MPLJ 550

Hon'ble Judges : B.C. Varma, Acting C.J.; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; R.P. Jain, Dy. A.G. and A.S. Jha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, Ag. C.J.

This Order shall also govern the disposal of Misc. Petitions Nos. 4359 of 1988, 4190 of 1989, 4484 of 1988 and 3088 of 1989, as the subject-matter of all these petitions is renewal of licences to run saw mills within certain areas in the State under the M. P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984.

With a view 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, the Madhya Pradesh Legislature enacted the M. P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984, (Act No. 13/84 -- to be referred to as the "Act"). It came into force in the entire State of Madhya Pradesh from the appointed day, i.e., 15th December, 1983. Section 3 of the Act permits the State Government to appoint licensing officer for the purposes of the Act. Such officer shall not be below the rank of a Divisional Forest Officer. Section 4 prohibits establishment of a saw mill or a saw pit, except under the authority and subject to the conditions of a licence to be granted under the Act. Even persons operating a saw mill or a saw pit on the

appointed day were required to apply for such licence within 30 days and to obtain such licence. Section 5 permits the State Government to declare, by notification, for reasons to be recorded therein, any area to be a prohibited area for a period not exceeding three years. The consequences, during the period any area is declared to be a prohibited area, are:--

(a) no licence shall be granted for establishment of a saw mill or saw pit in that area;

(b) no licence shall be renewed during that period;

(c) a saw mill or saw pit situated in that area shall cease to operate and keep its sawing operations closed; and

(d) no claim on account of damages because of closure shall be entertained nor any damages shall be payable.

Section 6 relates to grant, renewal, revocation or suspension of licence. According to the terms of this Section 6, an application for grant of licence shall be made in the prescribed form, accompanied by such fee and security as may be prescribed. On receipt of such application, the licensing officer, after such enquiry as he may deem fit, may grant that application. In case, however, he refuses to grant licence, he should make such order in writing and, in brief, record reasons for such refusal. The proviso to Sub-section (2) of Section 6, at the same time, requires that no order refusing to grant licence shall be passed, unless the applicant has been given a reasonable opportunity of being heard. According to Sub-section (4), the same provisions shall apply to renewal of licence, as they apply for grant of licence or for refusal to grant a licence.

In all the above petitions, by different notifications, certain areas described by geographical boundaries have been declared as prohibited areas, in exercise of powers u/s 5(1) of the Act. The State of Madhya Pradesh, in its Forest Department, issued a Memo No. D-453/51/42/10/3/86, dated December 26, 1986, containing a prohibition to establish any saw mill, within 20 kms. of the forest range, in areas not declared as prohibited areas. It is also provided therein that licence to run saw mill shall not be renewed in respect of such mills established within 10 kms of the limits of the reserved forest. The petitioners in all the other petitions, except this petition (M. P. No. 4335/88) challenge the notification dated 26-12-1986 and the consequent orders, refusing to renew their licences to run such saw mills. In the present petition (M. P. No. 4335/ 88) is challenged the notification No. F-18/2/ 86/X/3, dated 23-6-1987, referred to in Annexure P-3, whereby the entire Sehore district, excepting the area within the Municipal limits of Sehore, Ichhawar, Ashta, Nasrullaganj, Rehti and Village Budhni, including village Shyampur and Dharmada, has been declared as prohibited area. As a result of this notification, the petitioner's application for renewal of licence to run saw mill has not been granted. The petitioner challenges this action of refusal to renew the licence. Shri R. K. Pandey also challenges the vires of Section 5 of the Act. He prays that it be struck down as it

gives unguided power to the State Government to declare any area as prohibited area. The restriction imposed, besides being discriminatory is also unreasonable. It is also urged that before issuing that notification, there had been no application of mind. He also argued that the petitioner was given no hearing before issuing that notification or before refusing to renew the licence.

We shall first take up the question of vires of Section 5 of the Act. In the earlier part of this order, we have referred to the provisions of Section 5. The terms of the provision indicate that it is regulatory in nature and appears to have been enacted to subserve and promote the purpose of the Act, viz., to regulate, in public interest, establishment and operation of saw mills and saw pits to protect and conserve forest and environment. It will be seen from the provision itself that the notification, declaring any area as prohibited area, shall be operative for a maximum period of three years. A provision of such time limit itself indicates that the power given is not unbridled and is not open to misuse. The prohibition may be found necessary in view of the circumstances existing at a particular time and may be for any period less than three years, keeping in view the protection and conservation of forests and the environment. At the same time, the terms of Section 5 also require the State Government, while issuing the notification, to specify in the notification the reasons prompting the State Government to issue such a notification. To our mind, these checks and limits upon the exercise of that power to issue notification provide sufficient control in the exercise of that power by the State Government in that behalf. The attack, therefore, that the power to issue notification u/s 5 of the Act cannot be attacked as is unguided and does not subserve the purpose of the Act, cannot be sustained.

The next contention has been that any notification u/s 5 of the Act must of necessity, infringe the fundamental right to trade, which is guaranteed by Article 19(1)(g) of the Constitution. The restriction is said to be unreasonable. Article 19(1)(g) of the Constitution does provide that a citizen has a right to practice any profession or to carry on any occupation or trade or business. At the same time, Clause (6) permits imposition, by the State Government; of a reasonable restriction on such right to carry on any occupation, trade or business. It has, therefore, to be conceded that there is no fundamental right in any citizen to carry on business wherever he chooses. The executive authority, in the interest of public convenience, has a right to impose reasonable restrictions on this right to carry on business or trade. In a transport matter, the Supreme Court in *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*, held that for the convenience of the travelling public, the transport authority has a right to alter the starting places and termini of all public service vehicles. Again, the same principle was reiterated by the Supreme Court in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, where the Court observed that a combined reading of Clause (1) and Clause (6) of Article 19 makes it clear that a citizen has a fundamental right to carry on any trade or business and the State can make a law imposing reasonable restrictions on the said right in the interests of the general public: It is also well recognised that when an enactment is found to

infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid, unless those, who support it, can bring it under the protective provisions of Clause (5) or Clause (6) of that Article. This means that the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid. This rule was recognised by the Supreme Court in *Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others*, (See also *Laxmi Khandsari and Others Vs. State of U.P. and Others*,). Courts have attempted to formulate certain guidelines to be applied while deciding restrictions upon fundamental rights, as reasonable or otherwise. The Court, while upholding the fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and the larger and broader interests of society so that when such a right clashes with the larger interest of the country, it must yield to the latter. After considering a large number of decided cases on the subject, the Supreme Court, in *Pathumma and Others Vs. State of Kerala and Others*, enumerated as many as 7 guiding factors to determine the question of reasonable restrictions. Those relevant for our purposes are, (1) that a just balance has to be struck between the restriction imposed and the social control envisaged by Clause (6) of Article 19; (2) that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved; and (3) that the Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare. Again, while examining the provisions of Article 19 of the Constitution, the Supreme Court, in *Laxmi Khandsari and Others Vs. State of U.P. and Others*, observed, as to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. The Supreme Court found it difficult to lay down any hard and fast rule of universal application in this regard, but observed that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand. Further observation is that the restrictions may be partial, complete, permanent or temporary but they must bear a close nexus with the object in the interest of which they are imposed. The restrictions must be in public interest and must strike a just balance between the deprivation of right and the danger or evil sought to be avoided. (See also *State of Madras Vs. V.G. Row*,

We have earlier stated the purpose of the Act. The statement of objects and reasons for the enactment of the M. P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984, may now be stated :--

"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.

Sailent 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) 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.

(d) 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."

From this statement and the purpose of the enactment what appears is that it is with a view to prevent illicit trade in timber as also to prevent illicit felling that it is found necessary to regulate the establishment of saw mills. It was found that the saw mills afford all facilities to those engaged in felling. Illicitly felled timber is given an entirely different shape in the saw mills and then practically prevents detention of illicit felling. The object is obviously to prevent any such illegal activity in public interest. Conservation of forests and environment being another object sought to be achieved by the enactment, it shall be reasonable to permit the State Government to prevent, in a given area for a certain time, establishment and operation of any saw mill or saw pit. Such a provision also is undoubtedly in public interest. It may also be seen that the restriction imposed can be only for a maximum period of three years. With a view to conserve the forests and the environment, it shall always be just and reasonable to prevent operation of saw mills and saw pits in a given area for some time. As we have seen above, although a citizen has a fundamental right to carry on any trade or business, that right does not extend to any given place. Therefore, the restriction that such a business shall not be carried on in a given area and for the given time, cannot be violative of Article 19(1)(g) of the Constitution. We are unable to hold that the restrictions imposed by the provisions of Section 5 of the Act are in any way unreasonable. Instead, we find that in view of the object and the purpose of the Act, which has otherwise been held to be validly enacted by this Court in *Itarsi fhabhi* , the restriction imposed by Section 5 is quite reasonable. We uphold the validity of that provision.

Shri Pandey, learned counsel for the petitioner, attacked the notification dated June 26, 1987 (Annexure R-1) exhibited with the return), as being discriminatory and issued without any application of mind. This contention must also be

rejected. According to the terms of Section 5 of the Act, a particular area has to be declared as a prohibited area. It shall, therefore, always be that certain areas are picked up with a view to promote the object of the Act. There is little scope to argue that such action is discriminatory. It is for the State Government to decide which area is to be declared as prohibited area. Of course, the notification has to specify reasons for choosing a particular area to be declared as prohibited area. The validity of that notification has to be decided in the light of the reasons specified therein. In the return, the State Government have explained that the villages have been included in the notification because of their peculiar location. There is geographical difference between two sets of villages, i.e., those included and those excluded from the notification. We do not, therefore, agree that the notification suffers from any vice of discrimination, when it includes some villages and excludes others. There is also no substance in saying that the notification exhibits no application of mind likewise there is also no substance in saying that an opportunity ought to have been given to the petitioner before the notification was issued. It is not that the notification creates a total prohibition to issue licences for establishment of saw mills or saw pits. By the notification, saw mills and saw pits cannot be established or continued only at certain places that too for a certain time. That being so, we do not think it is obligatory upon the State Government to afford any hearing to any one or to the traders, before issuing any such notification. We are, therefore, of the opinion that there is no substance in saying that the notification discriminates between two sets of villages or that it is bad because it has been issued without any application of mind or without affording prior hearing.

The petitioners in these petitions, except the petitioner in Misc. Petition No. 4335 of 1988, also challenge the notification dated December 26, 1986, whereby a prohibition has been created for establishment of saw mills within 20 kms. of the forest range in non-prohibited areas and within 10 kms. of the limits of reserved forest. It has also been directed that licences shall not be renewed within these areas. A Division Bench of this Court in *Habib Ahmed Khan v. State of M.P.*, M.P. No. 2178 of 1988, decided on 7-9-1988, has negated the challenge. It has been held that the restriction imposed is reasonable and in public interest. It was held that it is not violative of the fundamental right guaranteed under Article 19(1)(g) of the Constitution. The Division Bench relied upon Sub-rule (3) of Rule 6 of the *M. P. Kashta Chiran (Viniyaman) Adhmiyam*, 1984, which permits the licensing officer, while considering grant of licence, to see whether the site of the saw mill is within such limits from the nearest Government forest, as may be prescribed by the State Government. We are completely in agreement with the view taken in that case. We, however, need not dwell on that question any further, because the counsel appearing for the petitioners (except in Misc. Petition No. 4335 of 1988), did not press their petitions on that point seriously in view of another circular dated November 30, 1989, which appears to have diluted the effect of the earlier notification dated 26-12-1986, to a considerable extent. Learned counsel submitted that in view of this latter circular, dated

November 30, 1989, they shall take their chances with the State Government and the licensing authority. We may, however, observe that the pending applications for renewal of licences under the M. P. Kastha Chiran (Viniyaman) Adhiniyam, 1984, as also the applications to be made in future, shall be considered expeditiously in the light of the latter circular dated November 30, 1989.

For the aforesaid reasons, we do not find any substance in these petitions, which are all dismissed. There shall, however, be no order as to cost. The security amount shall be returned to the petitioners.