

(1982) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 525 of 1982

Kaniram and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-11-1982

Acts Referred:

Forest Act, 1927 — Section 26, 36, 76
Madhya Pradesh Grazing Rules, 1979 — Rule 2, 3, 4

Citation : AIR 1983 MP 86

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; G.S. Solanki, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This is a petition under Article 226 of the Constitution.

2. The material facts giving rise to this petition briefly are as follows:--

The petitioners are residents of District Mandsaur in the State of Madhya Pradesh and carry on the business of breeding and selling camels, which business, according to the petitioners, is their only source of livelihood. The petitioners were being granted licences for grazing their camels in the forest in accordance with the Madhya Pradesh Grazing Rules, 1979, framed by the State Government in exercise of powers conferred by Section 76 of the Indian Forest Act, 1927. For the year 1982, the applications of the petitioners for grant of grazing licences were, however, not accepted by the respondents on the ground that there was an order issued by the State Government discontinuing the practice of granting grazing licences in the current year. The petitioners contend that the respondents have no authority to impose a total ban on grazing of camels in the forest and such ban, according to the petitioners, has adversely affected their right to carry on business inasmuch as their camels are deprived of their food and face extinction. The petitioners have, therefore, prayed that the order passed by the

State Government imposing a total ban on grant of licences to the petitioners for grazing their camels in the District of Mandsaur be quashed and the respondents be directed to accept the applications of the petitioners for grant of licence for grazing camels in the forest of District Mandsaur and decide their applications in accordance with law.

3. Shri Kokje, the learned counsel for the petitioners, contended that the State Government had no powers to pass an order imposing a total ban on grazing of camels in the Government forest in the District of Mandsaur and the respondents were bound to consider the applications submitted by the petitioners for grant of grazing licences and dispose of those applications in accordance with law. It was urged that such a total ban amounted to unreasonable restriction on the right of the petitioners to carry on their business.

4. In the return filed on behalf of the State, it is contended that the petitioners have no right to graze their camels in the Government forest; that browsing by camels causes damage to the trees, which is punishable under the provisions of Sections 26(1)(d & f) and 26(1)(g) of the Indian Forest Act, and hence every Forest Officer has power to prevent the commission of forest offence by refusing to grant licences to the petitioners to graze their camels in the Government forest. It is further urged that under the M. P. Grazing Rules, 1979, a concession was granted to the petitioner but they are not entitled to claim as of right, grazing facility in the forest. It was also stated that the State Government, by its order dated 17th July, 1982, had decided to prohibit the grazing of the camels in the forest area, in the interest of national wealth, to put a stop to destruction of trees by camels.

5. In view of the contentions raised before us, the main question that arises for consideration in this case is about the validity of the order passed by the State Government communicated to the Chief Conservator of Forests, by letter dated 17th July, 1982, not to issue licences for the current year for grazing by camel.

That order is as follows:--

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6. It was vehemently urged by the learned Deputy Government Advocate that the petitioners did not have any right to graze their camels in the Gov-eminent forest and that it was a matter entirely within the discretion of the State Government to grant or refuse to grant grazing licences. We fail to appreciate the force of this contention. We should have thought that after the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , it must be held to be well settled that every activity of the Government has a public element in it and it must, therefore, be informed with reasons and guided by public interest. It is no longer open to the State Government to contend that it can exercise its discretionary powers in any manner it likes. The letter dated 17th July, 1982 merely refers to the problem of camels in the District of Mandsaur, but does not disclose any reason whatsoever, which prompted the Government to pass that order. No material whatsoever was placed before us to show that the action of the State Government was based on sound reasons, was not arbitrary and was in public interest. That apart, when rules have been framed by the State Government for the regulation of grazing in the Government forests, the action of the State Government must conform to those rules. The material provisions of those rules are as follows:--

"Notification No. F. 7-29-78-LLL-I-K dated the 28th June. 1979, in exercise of the powers conferred by Section 76 of the Indian Forest Act, 1927 (No. XVI of 1927), and in supersession of all rules, orders and instructions previously made and issued on the subject the State Government hereby makes the following rules for the regulation of grazing in the Government forests in the whole of Madhya Pradesh, namely:--

1. Short title, extent and commencement; (1) these rules may be called the Madhya Pradesh Grazing Rates Rules, 1979.

(2) They extend to the whole of Madhya Pradesh.

(3) They shall come into force on the first day of July, 1979.

2. (4) All cattle maintained for commercial purposes shall be permitted to graze at commercial rates.

(5) Browsers like goats, sheeps and camels shall not be permitted to graze in the reserved forests.

3. Grazing licences: (1) It shall be lawful for the State Government or such officers as may be authorised in this behalf by the State Government by general or special order, to issue grazing licences for providing grazing facilities in a particular grazing unit for a particular grazing year and where grazing units have

not been constituted, each forest range shall be treated as a separate grazing unit till the constitution of such grazing units.

(2) In consideration for grant of grazing facilities, the State Government may impose grazing charges at such rates as may be notified by general or special order from time to time in this behalf.

4. Area prohibited for grazing; No grazing shall be permitted in closed coupes, plantation areas and such other areas, which are declared as closed for grazing by the Divisional Forest Officer.

6. Grazing rates: The State Government shall notify, from time to time the rates for grazing charges and transit grazing charges payable by the residents of Madhya Pradesh to whom the State Government in their discretion may grant grazing or transit grazing facilities in Government forests of the State."

7. A perusal of the aforesaid rules makes it clear that they are framed for regulation of grazing in the Government forests. The rules prohibit grazing by camels in the reserved forests and in the areas declared as closed for grazing by the Divisional Forest Officer. It is admitted before us that the petitioners are not seeking grant of licences for grazing their camels in the reserved forests. It is also admitted that the Divisional Forest Officer has not declared the District of Mandsaur as closed for grazing under Rule 4 of the aforesaid rules. It is also admitted that grazing rules notified by the State Government in the Government Gazette dated 28th Aug., 1979, provide for grazing rates for camels. The rules, therefore, do not empower the State Government to impose a total ban on grant of licences for grazing by camels in Government forests, which are not reserved forests, or which are not closed for grazing under Rule 4. It is significant to note that Rule 3 specifically provides for issue of grazing licences, in accordance with that rule, which does not exclude grant of licences for grazing by camels and that grazing rates have been prescribed by the State Government for grazing by camels. The contention advanced on behalf of the State that licences were refused to the petitioners with a view to prevent them from committing offences under the Indian Forest Act, is devoid of merit. Had that been the intention, the rules would not have made a provision for grant of grazing licences in respect of grazing by camels in the Government forests. It is true that the words in Rule 3 are it shall be lawful for the State Government or officers authorised in that behalf to grant grazing licences, but it is well settled that when a power is given to a public authority, there may be circumstances, which couple with the power a duty to exercise it. In this connection, we may usefully refer to the following observations of the Supreme Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, (para 13V--"In *Julius v. Bishop of Oxford*, (1880) 5 AC 214 it was observed by Cairns L. C. at pp. 222-223 that "the words "it shall be lawful" conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done something in the title of

the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so." It must, therefore, be held that the respondents erred in not exercising the power conferred by Rule 3, on grounds not covered by the rules.

8. For all these reasons, this petition is allowed. The direction issued by the Deputy Secretary to the State Government, by his letter dated 17th July. 1982 (Annexure "R/1") addressed to the Chief Conservator of Forests, is set aside. The respondents are directed to accept the applications of the petitioners for grant of licences for grazing their camels and to dispose them of in accordance with law. In the circumstances, parties shall bear their own costs of this petition. The amount of security deposit, if any, be refunded to the petitioners.