
(1998) 04 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 462 of 1998

Large Sized Multipurpose Co-operative Society Ltd., Gunpur	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 21-04-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 229
Orissa Forest Act, 1972 — Section 45

Citation : AIR 1998 Ori 180

Hon'ble Judges : S.N. Phukan, C.J;C.R. Pal, J

Bench : Division Bench

Advocate : Jagannath Patnaik, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das, R. Rath, P.K. Nayak, for the Appellant; Govind Das, M.R. Tripathy, D.B. Das and S.P. Mishra, AGA, for the Respondent

Judgement

S.N. Phukan, C.J.—The writ petitioner is the Large Sized Multipurpose Co-operative Society Ltd. (shortly stated "LAMPS") of Gunpur, LAMPS is a primary co-operative society having 5800 members. It is in existence from the year 1956-57 and has played a vital role in developing the habitants of Gunpur area and providing employment to the Adivasi people residing in Gunpur block area. LAMPS has been a forest contractor with regard to 10 minor forest produce and the society is completely dependent on the said produce. It has also been stated that since its inception, leases were executed between the State Government and the LAMPS for collection and sale to private parties of the above 10 minor forest produce. LAMPS is operating by following the Orissa Forest Contract Rules, 1966.

2. The original lease granted in favour of the LAMPS was being renewed from time to time and the last renewal was for three years from 1995-96 to 1997-98. Copy of the letter of the Government for renewal of lease is at Annexure 1. Opposite party No. 3, namely the Divisional Forest Officer, Rayagada executed the agreement between LAMPS and the State and the said agreement is at Annexure-2.

3. According to the petitioner, collection agent(sic), are engaged with the approval of opposite party No. 3 as specified under the Orissa Forest Contract Rules. Royalty has been paid regularly.

4. Opposite party No. 4 made an application to the Government stating, inter alia, that he is interested to carry on lease of one minor forest produce namely Tamarind in Gunpur Range. The State Government directed the Principal Chief Conservator of Forests, Opposite Party No. 2 to submit a report, in the report of opposite party No. 2, it was indicated that there is an existing lease agreement with the petitioner which is valid upto 30-9-1998 and it is not advisable to cancel the lease granted in favour of the petitioner.

5. According to the petitioner, all of a sudden, the Principal Secretary to Government of Orissa, Forest and Environment Department, Opposite Party No. 1 decided to grant permission to opposite party No. 4 for collection of Tamarind from Gunpur Range of Rayagada Forest Division for a period of one year from 1-10-1997 to 30-9-1998 vide letter dated 31-12-1997 (Annexure-4). The petitioner has alleged that this was done by completely ignoring the recommendation of opposite party No. 2 in a highly illegal and arbitrary manner.

6. Being aggrieved by the above order of the Government, the present writ petition has been filed praying inter alia to quash the said order (Annexure 4) and also to waive the royalty payable by the petitioner due to loss already incurred by it in view of the above order. The petitioner has also prayed that direction to be issued to extend the lease in its favour for a further period of one year and opposite party No. 4 be restrained permanently from carrying on any business in minor forest produce in future.

7. In the counter filed on behalf of opposite party No. 1, a point has been taken that the present petition is not maintainable in law. As a policy decision based on public interest the State Government, in order to wipe out the monopoly in collection of tamarind from Gunpur Range and for providing competition amongst the lessees for buying the produce, and to make it easier for primary gatherers to get fair price for their produce, granted lease in favour of opposite party No. 4. As the decision is not tainted with mala fide or against public interest, it is a valid one. The claim of the petitioner that lease was granted in its favour in respect of 10 minor forest produce for three years from 1995-96 to 1997-98 is not disputed. A statement has been made that a complaint against the petitioner during the year 1996-97 was received that the petitioner sub-leased for collection of tamarind to opposite party No. 4 and also committed irregularities for which a compensation amount of Rs. 750/- under the Orissa Forest Contract Rules, 1966 was assessed against the petitioner. Opposite Party No. 4 who was sublessee under the petitioner was allowed to collect the tamarind concurrently with the petitioner.

8. Regarding the respect of the Principal Chief Conservator of Forests, opposite party No. 2, for the period 1996-97, it is stated that instead of terminating the

lease, the Government allowed the petitioner to continue till its expiry. According to opposite party No. 1, opposite party No. 4, wanted to collect tamarind for using it as raw material in his industry. Therefore, it was granted on the report of the Divisional Forest Officer, opposite party No. 3 who also suggested not to renew the lease in favour of the petitioner beyond 30-9-1998. According to opposite party No. 1, long term lease can be granted to an industrial establishment located within the State where a particular forest produce other than timber is the raw material for the industry, and the provision of Rule 244 of the Orissa Forest Code, 1979 has been kept in view while granting lease to opposite party No. 4. Reference has been made to the Government order dated 5-3-1997 vide Annexure A/1. According to the said circular, Government decided to engage as far as possible more than one agency for procurement of minor forest produce in a specified area which would introduce competition among the lessees for buying the produce and make it easier for the primary gatherers to get fair price for their produce. Regarding the royalty payable it has been stated that it will be apportioned between the petitioner and opposite party No. 4.

9. In the counter filed on behalf of opposite party No. 4, reference has been made to the above policy decision of the Government and also the decision of the Tribes Advisory Council. It has been stated that the petitioner taking advantage of the long term lease was collecting forest produce through middle men by granting sub-lease to other persons including opposite party No. 4. Reference has also been made to the direction of the Chief Conservator of Forests to the Divisional Forest Officers to take action in the matter vide Annexure C/4. Opposite party No. 4 has started one Small Scale Industry at Rayagada for cold storage of Tamarind Kernel Products which was duly approved by the District Industries Centre. According to opposite party No. 4, being the proprietor of a Small Scale Industry and a sublessee under the petitioner for procurement of Tamarind from Gunupur Range, he approached the State Government for a lease. In fact, lease was granted for procurement of Tamarind in respect of Muniguda and Gudari Range for a period of three years along with T.D.C.C. Ltd. vide Annexure F/4. As the quantity of Tamarind from these two areas would not be sufficient, he made an application for grant of lease in respect of Gunupur Range. In view of the above facts, the Divisional Forest Officer recommended for grant of lease in favour of opposite party No. 4 to collect Tamarind from Gunupur Range along with the petitioner vide Annexure H/4. The State Government granted lease for one year to the opposite party No. 4 vide Annexure-4. Lease was signed after depositing the dues.

10. It is not disputed that lease in favour of the petitioner is still subsisting. By letter dated 16-10-1995 vide Annexure-1 the Government in the Forest and Environment Department directed the Principal Chief Conservator of Forests to renew the lease for ten minor forest produce including Tamarind in favour of the petitioner for a period of three years from 1995-96 to 1997-98. Annexure-2 is the agreement between the petitioner and the Divisional Forest Officer, Rayagada, opposite party No. 3. Annexure-3 is the letter dated 16-12- 1997 of

the opposite party No. 2, Principal Chief Conservator of Forests, who specifically stated that it would not be advisable to cancel the lease granted in favour of the petitioner as there will be breach of contract and legal complications. Annexure-4 is the letter dated 31-12-1997 by which the Government directed the Principal Chief Conservator of Forests to allow opposite party No. 4 for collection of Tamarind from Gunupur Range of Rayagada Forest Division concurrently with the petitioner for one year i.e. from 1-10-1997 to 30-9-1998 on the terms and conditions stated in the said letter.

11. Annexure A/1 is the policy decision of the Government on lease of non timber forest produce. This letter is dated 5-3-1997. It was issued by the Addl. Secretary to Government in the Forest and Environment Department to the Principal Chief Conservator of Forests. This letter only refers to non-timber forest produce by IDCC along with other lessees. It does not refer to collection by Co-operative Society like LAMPS and therefore, this policy decision is not applicable to the case in hand.

12. From the letter of the Government at Annexure-1 dated 16-10-1995 and the agreement duly executed by the parties at Annexure-2, we find that the petitioner was allowed to collect ten minor forest produce. In Schedule I of Annexure 2 the names of the forest produce have been mentioned. It was agreed that the forest produce sold and purchased under the agreement would be removed from the said area by the routes specified in Schedule III of Annexure-2. This agreement is still continuing and, therefore, grant of another lease, whatever may be the condition, to collect forest produce in the same area will be illegal and cannot stand the scrutiny of law.

13. By letter dated 31-12-1997 vide Annexure-4, the Government in Forest and Environment Department, directed the Principal Chief Conservator of Forests, to allow opposite party No. 4 to collect tamarind from Gunupur Range of Rayagada Forest Division concurrently with the petitioner for a period of one year on certain terms and conditions. Condition No. 1 is that the lessee will collect tamarind of Gunupur Range of Rayagada Forest Division from local Mats without he or his men entering into the forest.

14. As we have stated that the policy decision of the State Government is not applicable to the case in hand, grant of another lease to opposite party No. 4 is illegal. Of course, the State Government directed that opposite party No. 4 shall not be allowed to operate inside the forest and shall purchase tamarind from local Mats only. But this is in conflict with Schedule III of Annexure 2 as under the said schedule forest produce shall be presented for examination at one or other of the depots, namely Gunupur and Mukundapur. Therefore, the agreement in favour of the opposite party No. 4 cannot stand and accordingly it is quashed.

15. The petitioner has prayed for a direction that his lease may be renewed for a further period of one year. We are, unable to do so. If advised, it may file representation before the concerned authority which shall be disposed of by a

speaking order.

16. We find that lease was granted in favour of opposite party No. 4 on an application filed by him and not after inviting offers from any other party. We keep the question, whether lease can be granted in such manner in view of the settled position of law regarding grant of Government largesses, open to be decided in future in an appropriate case.

17. By order dated 20-2-1998, we directed that let both the petitioner and opposite party No. 4 collect tamarind in presence of Tahasildar, Gunupur. We also directed the Tahasildar to keep record of the quantity collected by the above parties and give report to this Court. We further directed that the tamarind collected shall be properly stored.

18. An affidavit has been filed by opposite party No. 4 showing the quantity of tamarind collected by him and the value of the quantity. We direct the Divisional Forest Officer, opposite party No. 3 to decide the question of disposal of the tamarind already collected by both the parties and royalty to be paid by the parties. The writ petition is accordingly disposed of. No costs.

C.R. Pal, J.

19. I agree.