
(2001) 08 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23706 of 1999

Mahavir Timber Merchant, Sec"bad

APPELLANT

Vs

Government of A.P. and another

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 2, 29, 29(1), 68(1)
Andhra Pradesh Forest Produce Transit Rules, 1970 — Rule 2(3)
Constitution of India, 1950 — Article 19(1), 301, 304
Forest Saw Mills (Regulation) Rules, 1969 — Rule 7(6)

Citation : AIR 2002 AP 58 : (2001) 5 ALD 198 : (2001) 5 ALT 134 : (2001) 2 APLJ 351 : (2006) 1 JCR 75

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J;Bilal Nazki, J

Bench : Full Bench

Advocate : Mr. Vedula Venkataramana, for the Appellant; Government Pleader for Fprests, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The vires of sub-rule (6) of Rule 7 of A.P. Forest Saw Mills (Regulation) Rules, 1969 inserted by G.O. Ms. No.99, Environment, Forests, Science and Technology (For.III) dated 17-7-1998 is questioned in this writ petition.

2. The petitioner is a partnership firm and is a licence holder under the provisions of A.P. Saw Mill (Regulation) Rules, 1969 (for short "Saw Mill Rules"). It is engaged in the trade of saw mill-cum-timber business. The activity of the firm is to obtain logs from Government timber depots at different places and to cut the same as per the requirements of the customers.

3. By reason of the aforesaid amendment sub-rule (6) has been inserted in the regulations, which reads thus:

When timber is brought for conversion to saw mill premises, the licence holder should retain the original permit and issue Form-II permit or Form-IV permit

under the A.P. Forest Produce Transit Rules, 1970 as the case may be to the timber owner along with a photocopy of original permit.

4. Therefore, by reason of the above provision, when timber is brought for conversion to saw mill, while retaining the original permit of the timber, it was obligatory on the part of the licence holder of the saw mill to issue Form II or Form IV permit under the A.P Forest Produce Transit Rules, 1970 (for short "the Transit Rules") to the timber owner along with a photocopy of the original permit.

5. According to the petitioner, the concept of "forest produce in transit" ceases the moment the timber reaches the mill and is cut and, therefore, it cannot be construed as a "forest produce in transit". The Transit Rules, therefore, cannot be applied to the timber from the stage it is cut in the saw mill. The restriction imposed on the saw mill to maintain and issue Form-II permit under the Transit Rules is ultra vires. The impugned rule, according to the petitioner, is practically unworkable, as, even when old wood from demolished houses is brought to the sawmill for cutting the same into different sizes as per the requirement of the customer, the authorities are insisting upon to comply with the impugned rule in such a situation also. The rule would, therefore, amount to unreasonable restriction offending the right of the petitioner to carry on his business guaranteed under Article 19(1)(g) of the Constitution of India.

6. Sub-section (1) of Section 68 of the Act reads as follows:

Power of the Government to make rule:--(1) The Government may, by notification make rules to carry out all or any of the purposes of this Act.

7. Chapter IV of the Act deals with control of timber and other forest produce in transit or possession. Section 29 thereof reads thus:

Power to make rules to regulate the transit and possession of limber and other forest produce. The Government may make rules to regulate.

(i) the floating of timber in the rivers in the State and the transit of timber and other forest produce by land or water;

(ii) the possession of teak wood of such value as may be specified in this behalf, or red-sanders wood by any person residing in any village within a radius of fifteen kilometers of such reserved forest as may be specified in this behalf.

(2) In particular and without prejudice to generality of the foregoing power, such rules may-

(a) specify the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import or export of removing of such timber of other forest produce without a permit from a forest officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such permit, or in the case of timber, without a transit-mark affixed by such officer,

(c) provide for the issue, production and return of such permit or in the case of timber, for affixing of transit-mark and for the payment of the fees therefor;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty, or charge due thereon or to which it is desirable for the purpose of this Act to affix a mark;

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8. The competence of the State, therefore, to make the rules cannot be disputed. Section 29 and sub-section (1) of Section 68 of the Act authorises the State to make rules pursuant whereto A.P. Saw Mill (Regulation) Rules, 1969 and A.P. Forest Produce Transit Rules, 1970 were framed to carry out the purposes of the Act.

9. Forest produce has been defined u/s 2(g) to mean:

(1) The following whether found in, or brought from a forest or not, that is to say timber, bamboos, charcoal, rubber, cacutchour, catechu, wood-oil, resin, natural varnish bark, lac, mahua flowers, mahua seeds myrobalans, tumki leaves, rousa grass, rauwolfia serpentina, adda leaves;

(1) The following when found, or brought from a forest that is to say-

(i) trees, such leaves, flowers and fruits as may be prescribed and all other parts or produce not herein before mentioned of trees;

(ii) plants nor being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;

(iii) wild animals, wild birds, skins, tusks, horns, bones, silk cocoons, honey wax, and all other parts or produce of animals and birds;

(iv) peat, surface soil, rock and minerals (including lime stone and laterite) mineral oil and all products of mines or quarries; and

(2) Such other product as may be prescribed:

Section 2(q) defines "timber" as under:

Timber includes trees fallen or felled, and all wood, cut up or sawn.

Sub-rule (3) of Rule 2 of the Transit Rules defines "forest produce in transit" to mean:

Forest produce in transit includes forest produce found stored in any place in margin of any public road or cart track or foot-path whether or not loaded in carts or other vehicles and forest produce found in any river, canal or water course whether in rafts or not.

10. The Andhra Pradesh Saw Mills (Regulation) Rules, 1969 have been issued in exercise of the powers conferred by Section 29 read with Section 68 of the A.P. Forest Act, 1967 to-regulate the location of saw mills and conversion of timber at the saw mills in the State. As already noticed hereinbefore, Section 29 of the Act empowers the Government to make rules to regulate the transit and possession of timber and other forest produce. The Transit Rules have been issued to regulate the movement of forest produce.

11. The contention of the petitioner that the Transit Rules cannot be made applicable to the timber from the stage it is cut in the saw mill has no merit. Sub-rule (6) of Rule 7 of the Saw Mill Rules does not mention about "forest produce in transit". It says the "timber" that is brought for conversion to saw mill premises. In our view, even after the timber is cut and converted, the timber does not cease to be "forest produce" in view of the definition of "forest produce" in Section 2(g) of A.P. Forest Act, 1967 which says that forest produce includes "timber". The definition clearly says that whether the various items mentioned in the definition are brought from a forest or not, are deemed to be the forest produce. The argument that the Transit Rules cannot be made applicable to the timber from the stage it is cut in the sawmill is also misplaced. Even after the timber is cut or sawn in the saw mill, the timber does not lose its identity as "forest produce" in view of definition of "forest produce" u/s 2(g) of the Act. If such timber so cut or sawn in the saw mill are found in any cart track or any other vehicles etc., it is a "forest produce in transit" as per the definition of "forest produce in transit" in sub-rule (3) of Rule 2 of the Transit Rules read with the definition of "forest produce" under "Section 2(g) of the Act.

12. Further, by reason of sub-rule (6) of Rule 7 of the Sawmill Rules, Transit Rules are made applicable only to the extent of issue of permits under Form-II or Form IV. No doubt the Sawmill regulations have been issued to regulate the location of saw mill and conversion of timber at the saw mills in the State. But, both the Saw Mill Rules and Transit Rules were issued in exercise of the powers conferred on the Government u/s 29 read with sub-section (1) Section 68 of the Act. Therefore, any rules issued in exercise of the power conferred u/s 29 of the Act to regulate the movement of timber and other forest produce can also be made applicable to the cases covered by the Saw Mill Rules, 1969. It may be that separate rules were issued in respect of saw mills, but that cannot be a ground to say that the Transit Rules cannot be made applicable to the saw-mills. Further, when we see the main object of the Forest Act, it was enacted with the avowed object of protecting and for management of the forests, which, undoubtedly, would include within its ambit regulation of the movement of forest produce in the State. Therefore, the entire object in enacting the Act and the rules framed thereunder was to protect and manage the forests in the State by adopting various regulatory measures under the main Act and the rules made thereunder. Merely because some forms provided for in one set of rules framed under the Act were made applicable to another set of rules framed under the very same enactment, it cannot be said that the impugned rule ultra vires the power of the

authority, particularly, when the object of the enactment is to adopt various regulatory measures for the protection and management of the forests. In view of the degradation of forests because of illicit felling of trees on large scale, which has a severe impact on the environment and ecology, the contention of the petitioner that the impugned amendment amounts to unreasonable restriction has also no merit.

13. As regards the prohibition in respect of old wood brought to saw mill for cutting purpose, it is for the authority to evolve a procedure how to regulate such kind of cases, but, for that matter, the rule itself cannot be struck down as arbitrary or violative of Article 19(1)(g) of the Constitution of India. Rule 5 of the Saw Mill Rules clearly says that timber for sawing and conversion shall not be accepted unless it bears property marks and is covered by a transit permit. Therefore, the petitioner was under no obligation to accept the timber brought for conversion without property marks and transit permit. The impugned Rule 7(6), in our view, cannot be termed as violative of Article 19(1)(g) since it is only a regulatory measure adopted with the object of protecting and managing the forests. In *State of Tamil Nadu and others Vs. M/s. Sanjeetha Trading Co. and others*, , dealing with a clause prohibiting transport or movement or carrying of timber from any place within the State of Tamil Nadu to any place outside the State, the Apex Court held that such prohibition shall be deemed to be regulatory in nature and not restrictive so as to attract Articles 301 or 304 or 19(1)(g) of the Constitution. Therefore, the impugned rule, which is regulatory in nature, cannot be declared as ultra vires the Constitution.

14. In *Smt. Vijayalakshamma and Another Vs. B.T. Shankar*, , the Apex Court while considering the provisions of Hindu Adoption and Maintenance Act, 1956 vis-a-vis the Old Hindu Law, clearly held that Courts may not add to or alter provision of statutes by reading into them what was never intended by the Legislature or may have been deliberately or consciously avoided by it. The Apex Court further observed that the extent to which aspects of law would require modernization, modification and alteration are matters of legislative policy and Courts may not add to or alter the language, structure or contents of a provision by reading into it that which was not intended by the Legislature.

15. Yet again in *Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, , the Apex Court dealing with legislative malice has categorically held that existence of malice in the legislation making process cannot be gone into by the Courts while considering the validity of a statute.

16. For the reasons aforesaid, we find no merit in the writ petition and it is accordingly dismissed. No order as to costs.