
(1993) 03 KAR CK 0030
In the Karnataka High Court
Case No : W.A. No. 2111 of 1992

Maruthi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Excise (Tapping of Trees) Rules, 1991 — Rule 3, 3 (4)

Citation : (1993) ILR (Kar) 1158 : (1993) 1 KarLJ 627

Hon'ble Judges : K.A. Swami, Acting C.J.;A.J. Sadashiva, J

Bench : Division Bench

Advocate : M.R. Naik, for the Appellant; S.R. Nayak, Government Advocate for R-1 to R-3 and T.S. Ramachandra, for R-4, for the Respondent

Final Decision : Allowed

Judgement

K. A. Swami, Ag. C.J.

1. This Appeal is preferred against the order dated 12th October 1992 passed by the learned Single Judge in Writ Petition No. 27252 of 1992. Learned Single Judge has rejected the Writ Petition. Therefore, the petitioner has come up in this Appeal. All the respondents are served. Respondents 1 to 3 are represented through Sri S.R. Nayak, learned Government Advocate and Respondent No. 4 is represented by Sri T. S. Ramachandra, Advocate.

2. As the Appeal involves a short question, it is admitted and heard for final disposal.

3. In the Writ Petition, appellant/petitioner sought for the following reliefs:

"(a) Issue a writ of declaration or any other appropriate writ, declaring the order at Annexure-B, dated 22.8.1932 in No. ECS/20/Mis/92 as illegal and unenforceable;

(b) issue a writ, and set aside or recall the order dated 20.8.1992 in W.P.No.

23949/92; and

(c) issue a writ of mandamus directing respondents to strictly enforce the provisions of the Karnataka Excise (Tapping of Trees) Rules 1991, and circular instructions which prohibit tapping of toddy in the areas where ban is enforced."

4. It may be pointed out here that the period for which permission was granted to the fourth respondent as per Annexure-B dated 22nd August 1992 bearing No. ECS/20/MISC/92 passed by the Excise Commissioner was for the first half of 1992-93. That period expired by the end of December 1992, but it is submitted that it has been continued for the latter half of the year 1992-93 which ends by the 30th of June 1993.

5. As far as the second relief is concerned, it is submitted on behalf of the petitioner that even if the order dated 30th March 1992 passed in Writ Petition 23949/92 is allowed to remain, the last prayer made in the Writ Petition ought to have been granted. Learned Counsel appearing for the appellant Sri M. R. Naik has made the following submissions:

That as per Rule 3 of the Karnataka Excise (Tapping of Trees) Rules, 1991 (hereinafter referred to as "the Rules"), no permission to tap the excise trees shall be granted in the State of Karnataka except Dakshina Kannada to any person excepting the Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959, the members of which are tappers; that this aspect of the matter was also recognised by the Department and the Excise Commissioner had issued a Circular dated 25.4.1989 in No. ECS.1 AUC.89 as per Annexure-A stating that in order to check clandestine sale of toddy in the areas in which the excise contract is granted it had been decided that in all those areas where the sale of toddy is banned no trees shall be allotted for purposes of tapping toddy for sale in other districts; that in recognition of that a Notification dated 24th April 1989 as per Annexure-D was also issued by the Excise Commissioner stating that in pursuance of the policy of the Government to discontinue the sale of toddy in the State in a phased manner it was notified for information of the intending bidders for the year 1989-90 that where the retail vending of toddy in the areas in which sale of toddy is allowed, the right of disposal is subject to the condition that no trees would be allotted for purposes of tapping toddy from the areas in which sale of toddy is discontinued. Therefore, it is submitted by the learned Counsel that in recognition of this policy the State Government repealed the 1967 Rules and framed 1991 Rules, wherein grant of licence for tapping excise trees was confined to the Co-operative Societies registered under the Karnataka Co-operative Societies Act, 1959, the members of which are all tappers.

6. On the contrary, it is submitted by Sri S.R. Nayak, learned Government Advocate that the appellant/petitioner has consented for granting permission to Sharada Enterprises, therefore, he cannot be permitted to espouse the same cause contrary to the consent given by him as against Respondent No. 4 under

the guise of Public Interest Litigation. It is also submitted that the period for which the fourth respondent was granted permission had expired, therefore, the relief (a) as sought for in the Writ Petition has become infructuous. As far as the enforcement of the Rule and obedience to the same is concerned, learned Government Advocate has rightly submitted that the Excise Commissioner is bound to follow the Rules and he cannot act contrary to the Rules.

7. However, it is not disputed before us that even after the expiry of the period mentioned in the Permission dated 22nd August 1992 (Annexure-B) further Permission has been granted in favour of the fourth respondent to continue to tap 4000 Coco trees in Hiriyr Taluk of Chitradurga District for the second half of the excise year 1992-93.

8. In the light of the submissions made, the following Points arise for Consideration:

(1) Whether the petitioner is disentitled to seek relief as prayed for in the Writ Petition on the ground that he has consented for granting permission in favour of M/s. Sharada Enterprises to tap excise trees in Hiriyr Taluk of Chitradurga District?

(2) Whether the action taken by the Excise Commissioner in granting permission to fourth respondent to tap excise trees in Hiriyr Taluk of Chitradurga District, is permissible in law?

(3) What relief?

9. It is relevant to notice that the learned Single Judge has rejected the Writ Petition on the following grounds:

"8. The impugned order Annexure-B is made on 22nd August, 1992 for the first half year 1992-93. The first half year has commenced on the 1st July, 1992 and already three months are over. In WP No. 23949/92 on the submission made by the learned Government Pleader a direction was given that 4000 coco trees shall be assigned to the petitioner subject to the availability of the trees in Hiriyr Taluk of Chitradurga District. Thereafter, the impugned order Annexure-B is passed. Further, W.P.No. 20409 of 1992 filed by this very petitioner was dismissed by this Court on 22.7.92 on the ground that the controversy raised in the said Writ Petition questioning the permitting of tapping of coco trees was covered by the order of this Court dated 28.8.1990 passed in W.P.No. 16317 to 16319 of 1990. The Petitioner himself consented by addressing a letter dated 16.7.92 to the second respondent for assignment of 17582 coco trees in Hiriyr Taluk of Chitradurga District to M/s Sharada Enterprises, who is similarly placed in Raichur District as Respondent No. 4 in Gulbarga District. The petitioner has suppressed this material fact of consenting for assignment of trees to M/s Sharada Enterprises and now contends in this Writ Petition that permitting of tapping of trees even if meaning it to be sent outside the District would result in sale of toddy clandestinely. If that be so, there was no reason as to why he gave

consent for assignment of 17582 coco trees to M/s Sharada Enterprises and objects for assignment of 4000 coco trees to Respondent No. 4. Added to this, the Writ Petition filed by the very petitioner in W.P.No. 20409/92 was also dismissed by this Court on 22.7.1992 wherein the very controversy was raised. These two grounds alone are sufficient to dismiss this Writ Petition. In the view I have taken it is unnecessary to refer to the other contentions raised and the decisions cited by the learned Counsel appearing for the parties. As to the interpretation of the Rules I express no opinion as it is unnecessary for the disposal of this Writ Petition."

In view of the reasons given by the learned Single Judge, it is necessary to examine the same. Writ Petition 23949 of 1992 was filed by the fourth respondent herein. To that the appellant herein was not a party. Therefore, that was matter between the fourth respondent and other respondents therein. In that Writ Petition learned Government Pleader submitted that 4000 coco trees would be assigned to the petitioner therein (4th respondent herein) in Hiriyr Taluk for tapping, Therefore, the said Decision cannot be held out against the petitioner/appellant as he was not a party to that proceeding. Further, though, learned Government Pleader agreed for granting permission to tap 4000 coco trees in Hiriyr Taluk, but the same could not have been permitted in the light of the Rules which did not permit such licences. Therefore, the reasoning of the learned Single Judge that the licence has been granted pursuant to the order dated 30th March 1992 to the fourth respondent would not have been confronted to the petitioner to deny the relief sought for. Learned Single Judge has referred to the order dated 22.7.1992 passed in the Writ Petition 20409 of 1992. That Writ Petition was filed by the very appellant/Petitioner against the State of Karnataka, the Excise Commissioner, the Deputy Commissioner (Excise), Chitradurga and M/s Sharada Enterprises. In that Writ Petition the order dated 1.7.1992 bearing No. PCS 20 MISC 92 passed by the Excise Commissioner granting permission to M/s Sharada Enterprises for tapping coco trees in Hiriyr Taluk was challenged. There was also a prayer made for issuing a direction to the respondents therein not to permit tapping of toddy in Chitradurga District. In that Writ Petition, learned Government Pleader submitted that the controversy raised in the Writ Petition was covered by the order dated 28th August 1990 passed in Writ Petition Nos. 16317 to 16319 of 1990. Learned Single Judge accepted that submission and dismissed the Writ Petition keeping open to the appellant herein to pursue the representation dated 29.6.1962 made before the Excise Commissioner. That representation was produced as Annexure-E in that Writ Petition which related to cancel the assignment of coconut trees for tapping toddy in Hiriyr Taluk in respect of the Toddy/Arrack Contractors of Raichur and Gulbarga District. It was also specifically stated in the representation that the toddy and arrack contractors of Gulbarga and Raichur Districts are trying to put the coconut trees for toddy tapping in Hiriyr Taluk. The assignment granted to them made it impossible to avoid clandestine sale, therefore, he also stated, he was put to loss and disabled to credit the rentals. Thus the representation dated

29.6.1992 related to two aspects - one in respect of inability on the part of the petitioner/appellant to pay the excise arrears and second, for discontinuation of the permit granted to M/s Sharada Enterprises for tapping trees. As far as the inability to pay excise arrears at the contract rate was concerned, it was covered by the Decision in Writ Petition Nos.16317 to 16319 of 1990 dated 28th August 1990. But the other relief relating the discontinuation of the permission granted to M/s Sharada Enterprises for tapping trees was not covered by that Decision. Therefore, learned Single Judge made an observation that it would be open to the respondents 2 and 3 i.e., the Excise Commissioner and the Deputy Commissioner (Excise), Chitradurga to consider the representation dated 29.6.1992 and pass appropriate orders. Hence, it is clear that as far as the grant of permit for tapping excise trees is concerned, it has not been rejected in the order dated 22.7.1992 passed in Writ Petition No. 20409 of 1992 though the present 4th respondent was not a party to that Writ Petition whereas M/s Sharada Enterprises was a party. Nevertheless the claim of the petitioner for discontinuation of the permission granted for tapping coconut trees was kept alive and it was not rejected. The other reason given by the learned Single Judge is that the Petitioner has agreed for granting permission to M/s Sharada Enterprises to tap 17582 coco trees in Hiriyur Taluk of Chitradurga District. We are of the view that even if the petitioner had consented for granting permission in favour of M/s Sharada Enterprises to tap coco trees in Hiriyur Taluk, as long as such permission is impermissible to be granted under the Rules, no such consent would either enable the Court to direct the authorities to grant permission or enable the authorities, namely the Commissioner for Excise and the Deputy Commissioner to grant such permission. This Court in exercise of its jurisdiction under Article 226 of the Constitution is duty bound to see that the authorities functioning within its jurisdiction keep themselves within the bound of Rules and Regulations and not exceed their authority nor act in violation of the Rules and Regulations. Rule 3 of the Rules in categorical terms provides that a licence to tap excise trees shall be issued only in favour of a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959, the Members of which are all tappers. Sub-rule(4) of Rule 3 of the Rules only makes exception in the case of Dakshina Kannada District thus -

"(4) A licence to tap any excise tree and supply toddy to a licence holder for sale to public shall be in Form T.T.-III. The sale of toddy to public shall be made only in the District of Dakshina Kannada."

Rule 8 provides that the Deputy Commissioner may, if he is satisfied that the applicant is eligible for grant of licence applied for, may grant the licence. Rule 10 provides that no person shall tap toddy from any excise tree unless he is a member of the Tappers' Society to which a licence is granted and has obtained authorisation to tap from the Inspector of Excise incharge of the range in which such Society is located. Therefore, it is clear that no person can be granted permission to tap excise tree in the State of Karnataka excepting the District of Dakshina Kannada as stated in Sub-rule (4) of Rule 3 of the Rules, except in

favour of a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959, the members of which are all tappers. In the instant case, permission has been granted to the 4th respondent which is not a Co-operative Society, the members of which are tappers, and the permission is granted in respect of excise trees in Hiriya taluk. Thus, it is clear that the Commissioner of Excise acted without the authority of law and in violation of Rules 3, 8 and 10 of the Rules in granting permission to 4th respondent to tap coco trees in Hiriya taluk for the first half of the year 1992-93 and also for the latter half of the year 1992-93. Permission granted in favour of 4th respondent in this regard cannot at all be sustained. In this regard it is also relevant to refer to the Decisions of the Supreme Court in K.N. Guruswamy Vs. The State of Mysore and Others, and in P. Bhima Reddy Vs. State of Mysore and Others, . In the first Decision it has been clearly laid down that the Rules and Act are intended to be obeyed strictly in the following terms:

"(10) This Court had occasion to observe in - The State of Assam Vs. Keeshab Prasad Singh and Another, - a fisheries case - that the sale of these licences forms such a lucrative source of revenue that State legislatures have deemed it wise not to leave the matter to unfettered executive discretion; accordingly legislation has been enacted in most parts of India to regulate and control the licensing of these trades; Acts are passed and elaborate Rules are drawn up under them. It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

(11) The Act and the Rules make it plain that liquor licencing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by Statute and Rule."

In Bhooma Reddy's case it was also held that the Excise Commissioner had no power to abrogate or modify the Rules framed u/s 71 of the Mysore Excise Act, now known as the Karnataka Excise Act. In that case, the Excise Commissioner, contrary to the Rules, by the order dated 12th December 1967, pending receipt of the Government Order, directed a particular procedure to be followed which was contrary to the Rules framed u/s 71 of the Mysore Excise Act. Therefore, it was held that he had no power to abrogate or modify the Rules framed u/s 71 of the Act. In the instant case, the Excise Commissioner has gone a step further. He has in violation of the Rules and contrary to them has granted permission itself for tapping trees. Therefore, it is clear that the Excise Commissioner has exercised the power which he did not possess. Hence it becomes the duty of this Court to interfere with the action of the Excise Commissioner since it had been done without the authority of law.

10. It is also brought to our notice that not only such permission is granted in favour of 4th respondent, but it has been granted in favour of several other excise contractors who are not before us, to tap excise trees contrary to the

Rules. Therefore, it is also necessary to issue a direction to the Commissioner to retrace his steps and to set at naught the actions taken by him in granting permission for tapping excise trees contrary to the Rules in favour of other persons other than the 4th respondent, because as far as the 4th respondent is concerned, he being a party before us, permission granted in the favour can be straight away quashed. For the reasons stated above, Points 1 and 2 are answered in the negative.

11. Accordingly, Writ Appeal is entitled to succeed. It is allowed. Order dated 12th October 1992 passed in Writ Petition No. 27252 of 1992 is set aside.

Writ Petition No. 27252 of 1992 is allowed. Permission granted in favour of the fourth respondent for tapping 4000 coco trees in Hiriya Taluk of Chitradurga District for the second half of the year 1992-93 is quashed. Fourth respondent is restrained from tapping coco trees in Hiriya Taluk for the second half of the excise year 1992-93. The Excise Commissioner is directed to retrace his steps within three weeks from today by taking appropriate action to rescind the permission granted to several other persons for tapping coco trees contrary to Rules 3 and 10 of the Karnataka Excise (Tapping of Trees) Rules, 1991, by issuing appropriate notices to them to show cause as to why permission should not be rescinded.