

(1990) 07 KAR CK 0074
In the Karnataka High Court
Case No : W.P. No. 1932/1990

N. Manjaiah Shetty

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Forest Rules, 1969 — Rule 85

Citation : (1990) 2 KarLJ 273

Hon'ble Judges : S. Rajendra Babu, J

Judgement

Rajendra Babu, J.-The petitioner in this case is calling in question the action of the respondents to entrust the right of collection of Latex, that is, "halmaddi" from Ailanthus Malabaricum trees from Kundapura, Byndoor and Shankaranarayana ranges and states that there should be a writ of mandamus directing the respondents 1 to 3 to call for tenders to entrust the right of collection of Latex from the forests in question by following the procedure prescribed under Chapter 12 of the Karnataka Forest Act, 1963 (hereinafter referred to as "the Act").

2. The ground upon which the petitioner seeks this relief is that under Rule 85 of the Karnataka Forest Rules (hereinafter referred to as "the Rules") no minor forest produce should be sold by any method other than the following:

"85. Methods of selling forest produce:- (1) No forest produce shall be sold by any method other than the following:

- (i) Sale by auction or tender or tender-cum-auction.
- (ii) Sale at the sanctioned schedule of rates in depots.
- (iii) Sale by issue of licences at the sanctioned seigniorage rates:

Provided that any other methods may be resorted to with the previous sanction of Government whenever the Chief Conservator of Forests considers it desirable

to do so in the interest of the Department."

It is submitted that the respondents have not followed any one of the methods prescribed in sub-clauses (i) (ii) and (iii) of Rule 85(1) of the Rules. It is the case of the petitioner that the finance of the State has been frittered away in a whimsical and fanciful manner. It is also submitted that since long the fourth respondent has been permitted to collect the said Latex or "halmaddi" on adhoc basis, which has resulted in loss of Rs. 20,00, 000/- to the Government and therefore calls for interference at the hands of this Court with appropriate directions to the respondents for disposal of the same.

3. The respondents have raised various contentions including the one that the period for which the lease has been granted has already expired on 30-6-1990 and therefore this petition itself having become infructuous, it is necessary to grant any relief to the petitioner. But the petitioner submits that this has become an annual feature so far as the respondents are concerned and therefore I should consider the contentions raised in the petition and indicate whether the procedure adopted by the respondents is in order or not and give proper guidance. Therefore, I propose to examine these contentions raised by the petitioner in this case.

4. The State which has filed statement of objections, disputes that the procedure has not been followed as provided under Chapter 12 of the Act and such other reliefs. The transaction with which we are concerned is in relation to "gugguladhoopa" (halmaddi) trees and not "dhoopa" trees which are of different species and they are Latex derived from Gugguladhoopa trees, the main raw material for manufacture of Agarbathis, which is a forest produce within the meaning of Section 2(7) of the Act. In so far as the right to collect latex which is "halmaddi" from forest ranges through respondent No. 4, lease has been granted for a consideration of Rs. 2.75 lakhs and thereafter the same had been extended for further periods upto 30-6-1990. The basis upon which the respondents had granted such a lease to the fourth respondent is that, fourth respondent is a Society with membership consisting mainly of members belonging to the Scheduled Castes and Scheduled Tribes, though there are other members belonging to other Backward Classes. It is with a view to improve their socio-economic conditions, of the Scheduled Castes and Scheduled Tribes and other Weaker Sections of the society, the Government took a policy decision in the year 1977 to allot the lease of minor forest produce to such societies. This was in pursuance of the Chief Ministers' Meeting in October, 1976 in New Delhi, wherein it was agreed that normally the tribals should have unqualified right to collect minor forest produce and the State Government should ensure a reasonable remunerative price for the commodities collected by them. It is also submitted that such produce should be disposed off through Co-operatives or through direct agencies of Government to eliminate middlemen. This position is further supported by the Government Order in No. FFD 30 FAD 77 dated 3-8-1977. It was further made clear in the Government Order dated 15-12-1982 that the

Commissioner for Scheduled Castes and Scheduled Tribes, Government of India, in his report for the year 1973-74 recommended that in many States the right to collect the Minor Forest product by the established Forest Labourers Co-operative Societies have already been made free of cost and wherever the position is not so, it should be made free of cost. The matter was examined in detail in consultation with the Chief Conservator of Forests (General), who suggested that the tribal Societies may be given concession of 50% over the estimated value of the minor forest product lease for a period of three years or such other period fixed from time to time. However, the Government granted concession to an extent of 35% of the estimated value of the minor forest product leases, by an order dated 15-12-1988. Similar orders have been issued from time to time. It is also stated by the petitioner that the objective of the Government is to give effect to Article 46 of the Constitution of India. Thus it is submitted that duty devolves upon the State to uplift the poor and down-trodden in pursuance of such an objective and therefore should put an end. The contention raised by the petitioner is based on Article 14 of the Constitution of India that such favoured treatment in favour of fourth respondent concerned results in discrimination and the action taken by the respondents is arbitrary.

5. In examining a contention of this sort, what is necessary to be seen is what the Supreme Court has stated in *Lingappa Pochanna Appealwar v State of Maharashtra and another* (AIR 1985 S.C. 389) wherein the scope of Article 46 vis-a-vis Article 14 of the Constitution is dealt with. This is how the Supreme Court has stated the position:

"One has only to look at the artlessness, the total lack of guile, the ignorance and the innocence, the helplessness, the economic and the educational backwardness of the tribals pitted against the artful, usurious, greedy land grabber and exploiter invading the tribal area from outside to realize the urgency of the need for special protection for the tribals if they are to survive and to enjoy the benefits of belonging to the "Sovereign, Socialist, Secular, Democratic Republic" which has vowed to secure to its citizens "justice, social, economic and political" "assuring the dignity of the individual". The great importance which the Founding Fathers of the Constitution attached to the protection, advancement and prevention of exploitation of tribal people may be gathered from the several provisions of the Constitution. Apart from Article 14 which, interpreted positively, must promote legislation to protect and further the aspiration of the weak and the oppressed, including the tribals.

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To adopt the expression used in the American parlance the favoured treatment to weaker sections of the society is only a compensatory preference. The utility of compensatory preference leads to the question of its fairness but general welfare promoted by this means would outweigh any argument of discrimination or arbitrariness raised on the touchstone of equality clause under the Constitution. The justification for the same can be looked at from three angles:

Firstly, Compensatory discrimination is an extension of the norms for equal treatment to enable the aspiring victims of previously victimised groups to encounter biased expectations, misperception of their capability and social standards. They suffer from absence of necessary networks to guide them to opportunities which are entrenched in systems of laissez faire and survival of the fittest in the commercial market, perpetuates the earlier discriminating situations. Compensatory preference therefore operates to encounter the residues of discrimination and to overcome structural arrangement that perpetuate the experience of the past.

Secondly, looked at from the point of view of this preference as a part of general welfare promoted in pursuance of Article 46 of the Constitution can be held to be means to reduce the group disparities, afford proper representations and to produce desired social outcome.

Thirdly, the action can also be supported with reference to history of invidious treatment which has resulted in disability which are carried by certain groups. However fair and unbiased the present measures may be, for distributing the benefits of the State to victims of past injustice will not fare well in terms of current performance. To distribute the benefits by neutral standards will perpetuate unjust exaction and exclusions in the past.

Fairness then demands the present distribution be arranged to undo and offset old biases, not to perpetuate them. In this view compensatory preference assures necessarily equality as guaranteed in Article 14 of the Constitution rather than discriminating any other person. The Government therefore need not always look to making profit in every measure it takes or distribute its largesse. In cases where it promotes Social Welfare as contemplated under Article 46 of the Constitution, question of testing such an action on grounds of loss of revenue would be misplaced.

In this view of the matter, I do not think there is any substance in the contentions raised on behalf of the petitioner as to violation of Article 14 of the constitution. Moreover, when the Government have followed the necessary procedure as provided under Rule 85 of the Rules, and when there is no dispute that the Government has adopted this procedure in order to promote the interests of the socially weaker sections of the society, I do not think the petitioner can be granted, the relief sought for in this petition. Hence petition stands dismissed. Rule discharged.

Writ petition dismissed.