
(2001) 01 OHC CK 0021

In the Orissa High Court

Case No : O.J.C. No"s. 4285 and 4286 of 2000

Pawan Kumar Agarwal and Sumit Kumar Agarwal

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat (Amendment) Act, 1997 — Section 44, 94
Orissa Grama Panchayat Act, 1964 — Section 150, 152
Panchayats (Extension to Scheduled Areas) Act, 1996 — Section 4

Citation : AIR 2001 Ori 91 : (2001) 91 CLT 558

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M/s Bijan Ray, B. Mohanty, S. Mohanty, B. Maharana and S. Pattnaik, M/s S.K. Padhi, S.K. Sahoo, S. Parida and Miss D. Mohapatra, for the Appellant; Mr. M.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioners in the above two writ applications have prayed for quashing the order dated 20-4-2000 passed by the Government of Orissa in the Department of Forest and Environment directing the petitioners to show cause as to why the lease of Minor Forest Produce items as indicated in the said notice shall not be cancelled, as well as the resolution of the Government dated 31-3-2000 under Annexure-3.

2. The petitioner in O.J.C. No. 4285 of 2000 was granted permission to collect forest produce, namely, Siali leaves by order dated 6-1-2000 for a period of three years. The area indicated in the said order was Bonai and Sundargarh Forest Divisions. Pursuant to the grant of the said lease in respect of the aforesaid two divisions, the petitioner deposited advance royalty and started operation of collection of Siali leaves by engaging several persons.

The petitioner in O. J. C. No, 4286 of 2000 was granted permission to collect

forest produce, namely, Siali leaves by order dated 6-1-2000 for a period of three years. The area indicated in the said order was Deogarh and Baramba Forest Divisions. Pursuant to grant of the said lease in respect of the aforesaid two divisions the petitioner deposited advance royalty and started operation of collection of Siali leaves by engaging several persons. The case of both the petitioners is that they have been running the said business for last 25 years and the decision of the Government to terminate the leases at this stage will seriously jeopardise their legitimate expectations.

3. Since both the writ applications involve common questions of law and fact, they were taken up together for hearing and are being disposed of by this common judgment.

4. Shri S. K. Padhi, the learned counsel appearing for the petitioners, submitted that the Government of Orissa have issued a notice to show cause on the ground that as per the mandate of the Panchayats (Extension to the Schedule Areas) Act, 1996 (hereinafter referred to as "the Central Act") and the Orissa Grama Panchayats Act, 1964 (hereinafter referred to as "the O. G. P. Act"), the ownership of Minor Forest Produce in Scheduled Areas has vested with the Gram Panchayats, and as per the provisions of the said Acts, the Government have declared the non-timber forest produce policy vide Resolution No.5503/F & E, dated 31-3-2000 specifying sixty items of non-timber forest produce to be treated as minor forest produce and in respect of the said minor forest produce the Scheduled Areas stand transferred to Gram Panchayats and therefore, the State Government had no jurisdiction to grant lease in respect of the said area. Shri Padhi further submitted that under the provisions of the Central Act, a State Legislature shall ensure that the Gram Sabhas are endowed with the ownership of the minor forest produce and the provisions of the Act contemplate a State Legislation and without a State Legislation, the Government cannot transfer the ownership of the minor forest produce. He further submitted that in view of the amendment brought in section 94 of the O. G. P. Act, i. e. Orissa Gram Panchayats (Amendment) Act, 1997, the non-timber forest produce as specified in the Resolution stands transferred to the respective Gram Panchayats, but no provision has been made either by way of enacting Rules or Regulations prescribing the manner in which the Gram Panchayat shall exercise within its local limit powers and perform such functions in such manner and to such extent so far as it relates to management of the Scheduled Areas are concerned. Therefore, in absence of any Rule to that effect, the State Government could not have transferred the Scheduled Areas and formulated a policy.

5. Shri Bijan Ray, learned Senior Advocate, has filed an application for intervention on behalf of the Tribal Development Cooperative Corporation of Orissa Limited ("the Corporation", for short) and stated that the decision rendered in this case may affect the interest of the Corporation and a prayer was made to implead the Corporation as a party. Since the petition was taken up for hearing along with hearing of the main cases, no orders were passed either

allowing or rejecting the said application. Therefore, in this judgment, I allow the intervention application. No counter has been filed on behalf of the Corporation and Shri Bijan Ray prayed for hearing of the main cases without filing a counter.

6. In the counter filed by the State - opposite party No. 1, it is submitted that in order to streamline the system of collection and disposal of non-timber forest produce items which are important source of livelihood of tribals and the rural poor people, majority of whom, are women, the State Government have approved certain policy guidelines in the resolution dated 31-3-2000. Such policy guidelines seek to regulate procurement and trade in non-timber forest produce and minor forest produce items and to abolish monopoly leases in the interest of proper price realisation by the primary gatherers of these produce items. The said policy decision is complementary with and in pursuance of the provisions of the Central Act, as well as the amended provisions of the O. G. P. Act, The provisions embodied u/s 4(m)(ii) of the Central Act provides that the State Legislature shall ensure that the Panchayats at the appropriate level are endowed with the ownership of minor forest produce. Consequent thereto, the provisions contained in section 44 of the O. G. P. Act have been amended by the State Legislature which is called the Orissa Grama Panchayat (Amendment) Act, 1997 to the effect that in the Scheduled Areas the Grama Panchayats shall subject to the control and supervision of the Grama Sasan, exercise within their local limits such powers and perform such function in such manner and to such extent as may be prescribed in respect of the ownership of minor forest produce. Therefore, under the Central Act as well as under the amended Act of the State, the ownership of minor forest produce has vested in the Grama Panchayats. The manner in which the Grama Panchayats shall exercise such functions and powers has also been specified in the notification dated 26-5-2000 issued by the Department of Panchayati Raj (Grama Panchayats) of the State Government. Therefore, there is absolutely no illegality in either transferring the Scheduled Areas in respect of the minor forest produce in favour of the Grama Panchayats or issuing notice to the petitioners for cancellation of the leases granted in their favour by the State Government which was not competent to do so.

7. Section 4(m) of the Central Act provides that the State Legislature shall ensure that the Panchayats at the appropriate level and the Grama Sabhas are endowed specifically with, apart from other things, the ownership of minor forest produce. In terms of the aforesaid Central Act, the State Government brought in amendment to section 44 of the O. G. P. Act and the relevant provision in the Orissa Grama Panchayats (Amendment) Act, 1997 runs as follows ;

"(2) Notwithstanding anything contained in any other law in the Scheduled Areas, subject to the control and, supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such powers and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely :--

(a) enforcement of prohibition or regulation or restriction of the sale and

consumption of any intoxicant ;

(b) the ownership of the minor forest produce ;

(c) prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribe."

The said provision prescribes that notwithstanding anything contained in any other law in the Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits such powers and perform such functions in such manner and to such extent as may be prescribed in respect of enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant, the ownership of the minor forest produce and prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribe.

8. Shri S. K. Padhi in support of his contention relying upon section 150 of the O.G.P. Act as well as the decision of the Madras High Court reported in V. Guruviah Naidu and Brothers Vs. State of Madras and Another, submitted that u/s 150 of the Act the State Government has power to make rules regulating the duties, functions and powers of a Grama Panchayat. But no such rules have been framed in exercise of power u/s 150. The expression "prescribed" appearing in the amended provision obviously means that prescribed under the Act or Rules made thereunder. The State Government having not made any provision prescribing the powers and functions of the Grama Panchayat with regard to enforcement of prohibition/regulation/restriction on sale and consumption of any intoxicant, the ownership of the minor forest produce, etc. as provided under the amended Act, 1997, the respective Grama Panchayats even if endowed with the Scheduled Areas, are left with no powers to deal with the same. Therefore, in absence of any provision to that effect either under the Act or in the Rules made thereunder, it is the State Government which has the authority to deal with the property.

9. The expression "prescribed" has been defined under the O.G.P Act as follows :

" "Prescribed" means prescribed by rules made by the State Government under this Act."

Therefore, there is some force in the contention of Shri Padhi that no rules having been framed with regard to the local limits of the Grama Panchayat, powers and functions to be performed by such Panchayat in respect of the Scheduled areas transferred, the Panchayats are left with no authority to deal with the property as provided under the said Amendment Act, 1992. There is no dispute that under the Amendment Act. 1997 all the Scheduled Areas stand transferred to the respective Grama Panchayats and the latter have become the owners of the transferred Scheduled Areas. Now the only question left to be decided is as to whether the Grama Panchayat has any authority to deal with the same in absence of any rules. It is worthwhile to refer to section 152 of the O. G.

P. Act. Section 152 of the O. G. P. Act provides as follows :

"152. Issue of order and removal of difficulties :--

(1) The State Government may from time to time with a view to ensure the proper functioning of the Grama Sassans, Palli Sabhas and Grama Panchayats and the proper implementation of the provisions of this Act and the rules made thereunder issue such administrative orders, directions and instructions as they deem fit not inconsistent with the aforesaid provisions for the guidance of the aforesaid bodies.

(2) Without prejudice to the provisions of sub-section (1), if any doubt or difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, do anything which appears to them necessary for the purpose of removing the doubt or difficulty."

A bare perusal of the said provision clearly indicates that the State Government have the authority to issue such administrative orders/directions and instructions as they deem fit not inconsistent with the provisions of the O. G. P. Act or Rules for proper functioning of the Grama Sasans, Palli Sabhas and Grama Panchayats for the proper implementation of the provisions of the Act and the Rules made thereunder. Sub-section (2) also provides that if any doubt or difficulty arises in giving effect to the provisions of the Act, the State Government may do anything which appears to them necessary for the purpose of removing the doubt or difficulty. In my view, so long as rules have not been framed prescribing the local limits within which the Grama Panchayat is to exercise its power as well as the functions and powers of the Grama Panchayat in the matter of enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant, the ownership of the minor forest produce, prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribes, it can exercise power in terms of the administrative instruction, or direction issued by the State Government. As a matter of fact the Panchayati Raj Department has issued an administrative order on 26th May, 2000 in exercise of power u/s 152 of the O. G. P. Act prescribing the manner in which the Scheduled Areas transferred to the respective Grama Panchayats shall be dealt with: Therefore, in my view, there is no illegality in issuing notice to the petitioners for cancellation of the lease which had been granted to them in the month of January, 2000.

However, it is desirable that the State Government should make appropriate Rules prescribing local limits of the respective Grama Panchayats, power and functions of Grama Panchayats and extent of such powers and functions in terms of the amended Act within a reasonable time.

10. In view of the discussions made above, I do not find any merit in the writ applications and the same are dismissed.

11. Writ applications dismissed.