
(1986) 03 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 264 of 1985

Purushottam R. Paradkar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:

Goa, Daman and Diu Preservation of Trees Act, 1984 — Section 9, 9(5)

Citation : AIR 1987 Bom 46

Hon'ble Judges : G.G. Couto, J;G.D. Kamat, J

Bench : Division Bench

Advocate : S.K. Kakodkar and A.F. Diniz, for the Appellant; V.B. Nadkarni, Government Advocate, for the Respondent

Judgement

Couto, J.—The petitioner who is a citizen of India is the owner of a property known as "Dergun" situated at Vaghurem Satari, Valpoi which is surveyed under No. 47..... By this writ petition under Art.226 of the Constitution of India, he challenges the demand notices bearing Nos. 31 Off Case 85-86, 1969 and 31 Off-case 86-86 1178 both dt. 21st Oct. 1985.

2. The petitioner's case is that he was granted a permission dt. 14-2-1984 for felling trees in his above identified property Dergun and under the said license the time for cutting the trees was limited to 90 days from the date have been issued under the Goa. Daman and Diu Preservation of Trees Act. 1984 for no permission for cutting trees in private property is required under the Forest Act, 1927. Chapter VI of the Goa, Doman and Diu Forest Rules 1964 having been struck down by the Judicial Commissioner's Court. The petitioner was not able to fell the trees within the period specified in the licensee for want of laborers and therefore by his letter dt. 14th May 1984. he applied to the Deputy Conservator of Forests for extention of the period of permission by three months. The Deputy Conservator of Forests did not, however, care to reply to the said letter. In Feb and Mar 1985 the Round Forester Bhironda seized some trees that according to him had been illegally felled in the said property Dergun. Thereafter, by the

impugned demand notices the Range Forests Officer. Valpol required the petitioner to pay Rs. 6080/- and Rs.27,350/- respectively, towards offenses allegedly committed by the petitioner for illicit cutting of trees in the said private property.

3. These demand notices are being challenged by the petitioner on several grounds. However, at the time of hearing of the case. Mr. S.K. Kakodkar the learned counsel appearing for the petitioner did not press the grounds that Ss. 16 and 22 of the Goa, Daman and Diu Preservation of Trees Act. 1984 are unconstitutional and void as the legislative Assembly of Goa, Daman and Diu lacks legislative competence to enact the said Act and that the provisions of the aforesaid S.22 are also unconstitutional as violative of Art. 14 of the Constitution since they are harsh, oppressive unreasonable and arbitrary. He in factor, restricted his attack by contending that the felling of trees in the property Dergun cannot be said to be illegal inasmuch as (1) a permission to fell has been granted on 14-2-1984.....limiting the permission to a specified period and the rules , if any authorising the same is ultra vires and void. arbitrary and unconstitutional; (3) the application for the extension of the permission period made on 14-5-1984 was pending before the Deputy Conservator and (iv) in any event the extension no having been received the same ought to have been deemed to have been granted.

..... the learneds counsel invited our attention to the relevant provisions of the Goa, Daman and Diu Preservation of Trees Act, 1984. He submitted that S.8 deals with restriction on felling and removal of trees and provides that the felling of any tree is prohibited unless a previous permission of the Tree Officer is obtained. S.9 deals with the procedure for obtaining permission to fell, cut, remove or dispose of tree. Sub-sec(5) lays down that every permission granted under the Act shall be in such form and subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise as may be prescribed. The learned counsel then contended that the conditions that can imposed under sub-sec.(5) of S.9 of the Act manifestly cannot go to the limitation of period for felling of the trees, In fact, according to the learned counsel, the Tree Officer has to make up his mind at the time of dealing with the application for felling the trees whether the permission to cut the trees wheather the permission is to be granted, there is no reason of whatsoever nature to limit the cutting of trees for a particular period of time. He further contended that soon after permission is granted, a right is accrued to the person applying for such permission and, therefore, if some limitation regarding time is put in the application, this will amount to nullify and deny the right already acquired. This, according to the learned counsel, vitiates the said permission and, therefore, the clause or connotation limiting the period for cutting the trees is void. Reliance was placed in support of this contention on the decisions of the Supreme Court in the cases of State of Mysore v. Mallick Hashim & Co. Air 1973 SC 1449 and AIR 1972 1935 (SC) . In any event, the learned counsel also contended that the learned counsel also contended that the

conditions that can be imposed under sub-sec. (5) of S.9 are in respect of regeneration of the area, re-planting of trees and so on, but never in respect of limitation of time of the cutting of the tree. The learned counsel then invited our attention to the Goa, Daman and Diu Preservation of Trees Rules, 1983. Thedeal with the manner in for felling the trees trees. In the said Form, there are some terms and condition imposed, conition 3 thereof reading that "felling of trees shall be completed within day". According to the learned counsel, no number of days wer specified in the Rules and it appears that this was left entirely to the discretion of the Tree Officer. This leads manifestly to arbitrariness and, therefore, is by nature void.

5. Mr. V.B. Nadkarni, the learned Government Advocate, however, opposed this view of Mr. Kakodkar and contended that the object of the Act is the preserve the trees and, therefore, the rule is that no tree can be cut without the permission of the Tree Officer, In other words, the permission to cut the trees Officer. In other words, the permission to cut the trees is an exception and can be granted only in such terms and conditions as Tree Officer, in his discretion feels proper and adequate. While imposing such conditions, the Tree Officer has to determine several considerations relating to the ecology and otherwise. There is nothing in the Act that bars the said Officer from limiting in time the permission to cut the trees and, therefore, to say that by imposing such limitation, a right already accrued to the applicant is taken away is entirely ;wrong. In fact, on one hand, the applicant for cutting the trees has no absolute right, for on the contrary, there is a prohibition to cut trees, and on the other, nothing prohibits such applicant, on the expiry of the period of license, to apply again for the license. Insofar as the non-specification of time for cutting the trees in ;the Rules, the learned Government Advocate submitted that that the exercise of power by the Tree Officer has to be made in a reasonable way while fixing the time for cutting the trees. He contended that the circumstances of each case had to be considered and the time for cutting of the trees should vary according to the number of the trees to be cut and the area covered by the license.

6. S. 8 of the aforesaid Act provides that notwithstanding anything contained in any other law for the time being in force or in any custom or usage or contract and except as provided in the Act or the rules made thereunder, no person shall fell or remove or dispose of any tree or forest produce in any or otherwise except with the previous permission of the Tree Officer, provided that if the tree is not immediately felled, there would be grave danger to life or property or traffic, the owner of the land may take immediate action to fell such tree and report the fact to the Tree Officer within twenty-four hours of such felling. S. 9 deals with the procedure for obtaining permission to fell, cut, remove or dispose of a tree and provides that any person desiring to fell or remove or otherwise dispose of by any means a tree, shall make an application to the concerned Tree Officer for permission had such application shall be accompanied by attested copies of the documents as may be prescribed in support of ownership over the land, the

number and kind of trees to be cut their girth measured at a height of 185 meters from ground level and the reasons therefore survey sketch showing clearly the site and survey numbers of the property Sub-see (2) provides that on receipt of the application, one Tree Officer may after inspecting the tree and holding such enquiry as he may deem necessary either grant permission in whole or in part , or for reasons to be recorded in writing refuse permission However permission shall not be refused if the tree is dead diseased or wind-tallen or is silvr culturally mature provided it does not occur on a steep slope or constitutes obstruction to traffic or is substantially damaged or destroyed by fire lighting, rain or other natural causes or is required in rural areas to be cut with a view to appropriating the wood or leaves thereof or any part thereof for bona fide use for fuel fodder agricultural implements or other domestic use, Sub-sec.(3) provides that the Tree Officer shall give his decision within sixty days from the date of receipt of the application provided that no permission shall be granted to any person from the same area on more than two occasions during the same year subject to a maximum area of one hectare at a time. Sub-sec.(4) provides that if the Tree Officer fails to communicate his permission or refusal within the period specified under sub-sec.(3) the permission referred to in S. 8 shall be deemed to have been granted. And sub-sec.(5) lays down that every permission granted under the Act shall be in such form and subject ;to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be prescribed.

7. A plain reading of the aforesaid Ss. 8 and 9 of the Act makes it clear that the cutting of any tree or forest produce in any land, whether private or belonging to the State, is in principle, not permissible, Such cutting in fact, can be done only with the prior permission of the Tree Officer except in the cases where there is grave danger to life or property or traffic, where the owner of the land can take immediate action to fell such tree but has to report the fact to the Tree Officer within twenty-four hours. The object of the Act is clearly to preserve the trees for ecological reasons and this becomes quite clear from sub-sec(5) of S 9 which, iinter alia, provides that every permission shall be subject to such conditions, including taking of security for ensuring regeneration of the area and re-planting of trees or otherwise, as may be prescribed. How if this is the object of the Act, we fail to understand the argument advanced by Mr. KaKodkar that among the conditions which can be imposed under the aforesaid sub-sec 9 one restricting the cutting to a particular period of time cannot be imposed. In fact, the restriction of cutting to a limited period of time may be justified on several considerations particularly on the consideration of the need of Supervision and control of the cutting. It is true that the learned counsel contended that once the permission is granted a right is accrued to the applicant and if the permission to tell granted is limited to a short period of time ultimately by this limitation, the said right is taken away in our view thing submission of this learned counsel has no force. In fact the right is accrued only in the terms and conditions of the permission and, therefore the said right is abinition limited by time. Secondly one

cannot say that an applicant to whom permission to fell trees was granted becomes entirely helpless if he didn't cut the trees within the time specified in the license. He can indeed apply for a fresh license and he will be able to cut the trees, if permission is granted. Reliance has been placed by Mr. Kakodkar on the decisions of the Supreme Court in *State of Mysore v. Mallick Hashim & Co.* and in *B. B. & D. Mfg. Co. v. E. S. I. Corpn.* These authorities of the Supreme Court, however, in no manner advance the case of the petitioner. In *Mallick Hashim & Company's* case AIR 1973 SC 1449, the question of the vires of some rules framed under the Mysore Sales Tax Act came up for consideration. The Court after examining the relevant provisions of the Central Sales Tax Act, Mysore Sales Tax Act and the aforesaid rules, observed that sub-rules (2) and (3) of R. 39-A were wholly unreasonable and, therefore, could not be sustained. In fact, the rules amounted to an attempt to deny the dealers the refund to which they were entitled under the law or at least to make the enforcement of the right unduly difficult by prescribing unnecessary restriction regarding time within which to claim the refund. In AIR 1972 1935 (SC) the question of the validity of a rule made under the Employees State Insurance Act fell for determination. While considering the said question, the Court observed that the omission to provide a period of limitation under Ss. 68 and 75 while providing for a limitation of claim by an employee for the payment of any benefit under the regulations shows clearly that the Legislature did not intend to fetter the claim under S. Therefore where the Legislature clearly intends to provide specifically the period of limitation in respect of claims thereunder it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to prescribe the procedure to be followed in proceedings before the Courts. The Court further held that R 17 of the Rules bars the claim itself and extinguishes the right which is not within the place of procedure. These two authorities are in respect of some legislation which was giving some benefits to the persons concerned. By the Rules framed, the benefits which were conferred by the Act were practically taken away. It was in such circumstances that the Supreme Court held that such Rules were ultra vires and invalid. This is not manifestly the case before us for, in any event, if the trees are not cut within the time specified in the license, the applicant can take recourse to a fresh application for license to cut the trees. We may also mention here that under S.8 of the Act, the license is to be granted as provided by the Act and the Rules made thereunder. Now, the Goa, Daman and Diu Preservation of Trees Rules, 1983 specifically provide for the forms for the permission to fell trees and in the said forms there are some statutory terms and conditions included. One of the conditions, viz. condition 3 is that felling of trees shall be completed within a particular number of days. The Rules do not state what is the number of days and therefore, one has to hold that the fixation of the number of days is left entirely to the discretion of the Tree Officer who happens to be also the Deputy Conservator of Forests. The mere fact that the number of days within which the felling of the trees is to be done is left to the discretion of the Tree Officer does not make the said condition unlawful.

and invalid. Manifestly some discretion was to be given to Tree Officer for the cutting of the trees is not restricted to one or two trees and may be in reference to a big number of trees which are contained within the area of one heater by virtue of sub-sec. (3) of S. 9 of the Act. This discretion is vested in one officer of quite higher rank. viz., the Deputy Conservator of Forests and considering all the relevant circumstances it cannot be said that this discretion is arbitrary. Of course, if the discretion is used in an unreasonable and improper manner that may be subject to challenge.

8. Coming now to the next ground of challenge Mr. Kakodkar contended that the petitioner has, in any event, filed an application for extension of the permission for three months more and the said application was pending when ;the impugned notices were served on him The learned counsel then relying on the provisions of sub-sec.(4) of S 9 of the Act. contended that in the circumstances it has to be deemed that the permission was duly granted. It was, however, contended by the respondents in their affida vit-in-reply that this is not the case, for after the petitioner sent his letter dt 14-5-1984 asking for extension of the period of permission by three months, the Deputy Conservator sent the application of the petitioner to the Range Forest Officer under a letter dt. 12-6-1984 requesting him to inspect the area and submit his detailed report. It was also observed in the said letter that the petitioner has ;to freshly apply in form "B". The Forest Officer by his letter dt. 11-2-1985 reported to the Deputy Conservator of Forests that the Range Forester. Bhironda contacted the petitioner three times and requested him to show the site for preparing the report, but the petitioner had not obliged. It is further alleged that this letter was sent to the petitioner. In the circumstances, where the petitioner did not care to file a fresh application, it cannot be said that there was a deemed permission. In his affidavit-in-rejoinder, the petitioner denied having received copies of the aforesaid letters dt. 12-6-1984 and 11-2-1985 and, therefore, he maintained his stand that the permission is deemed to have been granted.

9. The respondents have filed, along with the affida vit-in-rely, a copy of the letter dt, 12-6-1984(exhibit R.-1). It is stated in the said letter that an application along with a copy of license from Purushottam Ramchandra Paradkar was enclosed and the Range Forest Officer was requested to inspect the area and submit his detailed report and that as the permit is more than three months old, the party has to apply in fresh application in Form B. It appears that a copy of this letter was sent to the petitioner. However, it is not known whether this letter was at all received by the petitioner. Be that as it may, however, we find rather surprising that if at all a fresh application in Form B was required, the Deputy Conservator of Forests did not reply to the letter of the petitioner praying for extension of time to file a fresh application. The procedure followed is rather cumbersome and, in any case does not establish that the petitioner was aware of the said requirement. Thus, in the absence of an order in the said application dt. 14-5-1984 whereby the petitioner asked for extension of the period of license to cut trees, we have to hold that in fact, the sought permission has to be

deemed as granted. It is true that the learned Government Advocate submitted that an application has to be made in accordance with the rules, giving all the details specified therein. But at the same time, we have to consider that at the time of granting the permission, the petitioner had furnished all the relevant details to the concerned authorities and the only thing that he was asking for was an extension of three months time for cutting the trees. In the circumstances, his letter dt. 14-5-1984 is for all practical purposes, to be construed as an application for extension of time or a fresh application for cutting of the trees. Under sub-sec.(4) of S. 9. if the Tree Officer fails to communicate his permission or refusal within the period specified under sub-sec.(3), the permission referred to in S. 8 shall be deemed to have been granted. Thus, since no order was passed in the said letter dt, 14-5-1984, it is to be deemed that the permission was granted and the license to cut trees was extended for a further period of three months.

10. Now, it is common ground that the license to cut the trees was granted for a period of three months on 14-2-1984. Therefore, the said license had expired on 13-5-1984. The letter seeking an extension of three months is dt. 14-5-1984 and the extension sought is for a further period of three months. This being so, it is the case of the petitioner himself that the extended period for cutting the trees would have come to an end on 13-8-1984. Now, the respondents had produced, along with their reply, two statements recorded by the Round Forester, Bhironda, on 27-2-1985 and 13-3-1985. In the first statement the petitioner stated that he had personally cut the trees in survey No. 47 by employing laborers; that he had permission from the Forest Department for making such cuttings in the year 1984, but due to non-availability of laborers he could not cut the trees and had started to cut the trees only in the year 1985, and just eight to ten days prior to his statement. In the statement dt. 13-3-1985, the petitioner once again admitted cutting the trees in the year 1985 and admitted his fault.. From these two statements, it becomes exceedingly clear that, in any even, the petitioner has cut the trees much beyond the extended period of the license. It is ;true that by his letter dt. 15-4- 1985 the petitioner came up with a new stand by stating that he had cut the trees during the pendency of the license i.e., before its expiry. He did not give any details. But in view of the two above referred to statements, this letter appears to be only an afterthought.

11. In the circumstances, therefore it trees in his property without obtaining a proper license and further that he has not approached the Court with clean hands. In this background, it becomes clear that he is not entitled to any relief.

12. The result is that this writ petition fails and, consequently, the rule is hereby discharged with costs.

13. Petition dismissed.