

(1993) 09 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 28425 of 1993

Ranji Cariappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 21, 21 (1), 21 (1) (a), 27

Citation : (1993) ILR (Kar) 3321 : (1994) 1 KarLJ 146

Hon'ble Judges : Shivashankar Bhat, J

Bench : Single Bench

Advocate : K.S. Gowrishankar, for the Appellant; Sateesh M. Doddamani, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—Petitioner challenges the Government Order dated 17.5.1993 purported to have been made u/s 21(1) of the Karnataka Preservation of Trees Act, 1976. The said order reads as follows :

"In exercise of the powers conferred by Sub-section (1) of Section 21 of the Karnataka Preservation of Trees Act, 1976 (Karnataka Act 76 of 1976), the Government of Karnataka hereby empowers the Tree Officer with the powers specified in Clause (a) and (b) of Sub-section (1) of the said section, to the extent specified below, namely -

(a) in respect of timber, the quantity not exceeding 3M3;

(b) in respect of fuel wood, the quantity not exceeding 10 M3;

(c) in respect of both fuel wood and timber the value of which does not exceed Rs. 15,000/-"

2. According to the petitioner, the restriction as to the power of the Tree Officer to compound the offence depending upon the value of the timber is ultra virus the provisions of Section 21 of the said Act.

3. Section 21 of the Act reads as follows: "Power to compound offences-

(1) The State Government may, by order, empower a Tree Officer:-

(a) to compound on payment of a sum not exceeding five thousand rupees any offence under this Act;

(b) to release any property seized or liable to confiscation, on payment of the value thereof, as estimated by such officer;

(2) On the payment of such sum or such value or both, as the case may be, to such officer, the offender, if in custody, shall be released. The property if any, seized shall be released and no further proceedings shall be taken against such offender or property."

In view of the above it is clear that the State Government may empower a Tree Officer to compound any offence under the Act subject to the payment of amount referred to in the Section. The Tree Officer may also be empowered to release any trees. Once the Tree Officer is empowered to compound, the power would be to compound any offence as stated thereunder. The power vested in the Tree Officer is not confined to the nature of the offence under the Act or the gravity of the offence, depending upon the value of the subject matter. Section 21(1)(a) is very clear when it says that the Tree Officer may compound any offence under the Act. Therefore, while empowering the Tree Officer, if the State Government reduces the power of the Tree Officer to compound any offence with reference to the value of the subject matter that would certainly be beyond the purview of Section 21 of the Act.

4. The learned High Court Government Pleader however, sought to justify the order by recourse to Section 27 of the said Act. Section 27 empowers the State Government to issue such generator special directions regarding the discharge of the functions of the subordinate authority and for carrying out effectively the purpose of the Act. This is certainly a superior administrative power vested in the State Government. However, this power cannot cut down the generality of the power given to the Tree Officer u/s 21 of the Act when the said Tree Officer proceeds to compound any offence. Therefore, I am of the view that the impugned order cannot be sustained when it says the power to compound any offence is confined to the extent specified in Clauses (a), (b) & (c) of the said order. The said clauses are accordingly declared as ultra virus Section 21 of the Act.

The Writ Petition is accordingly allowed.

Rule made absolute.