

(1995) 03 OHC CK 0025
In the Orissa High Court
Case No : O.J.C. No. 1545 of 1995

Sushila Saw Mill

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Constitution of India, 1950 — Article 15(1), 19(1), 19(6)
Orissa Saw Mills and Saw Pits (Control) Act, 1991 — Section 4(1)

Citation : AIR 1995 Ori 256

Hon'ble Judges : V.A. Mohta, C.J;R.K. Dash, J

Bench : Division Bench

Advocate : G. Rath, Sanjit Mohanty, S.C. Samentray, M.C. Sanu and S.P. Panda, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, C.J.—This is yet another round of attack on constitutional validity of Section 4(1) of the Orissa Saw Mills and Saw Pits (Control) Act, 1991 ("the Act") on the ground that it violates Articles 19(1)(g) and 14 of the Constitution. By the said provision is created a total ban against the operation or establishment of private saw mills/pits in the prohibited zone specified therein, namely, a reserved forest, protected forest or any forest area or area within ten kilometers from the boundary of any such forest or forest area. Earlier round of attack was in the case of Laxminarayan Saw Mill etc. v. State of Orissa 1995 (1) CLR . Tracing the historical background of the Legislation and its purpose, this Court upheld the validity. Following observations made therein are relevant:--

".....Fundamental right to practice any profession or to carry on an occupation, trade or business is specified under Article 19(1)(g) of the Constitution. But this right is subject to limitations provided for in Sub-Article (6), which permits the State to make a law imposing, in the interest of general public, reasonable restrictions on the exercise of that right. The key words are "reasonable restrictions" and "in the interest of general public". What is

reasonable restriction and what is in the interest of general public cannot be put in any strait jacket formula. All depends upon the object of the Act and its scheme. But the very words "reasonable restrictions" connote that they should not be arbitrary or of an excessive nature beyond what is required in the interest of public. Though there is a presumption in favour of constitutionality of a statute, determination of reasonableness by legislature is not conclusive. It is subject to judicial review. These are the broad features and touchstones on the basis of which the validity of an enactment has to be tested. Considering the object sought to be achieved and the legislative background of the Act, it cannot be said that the total prohibition of saw mill/pit in the prohibited zone is not a reasonable restriction and is not in public interest. On the face of it, it is in public interest. No law can claim to be perfect for all times to come. Passage of time, new experiences etc. necessitate changes. The extent of the changes depends upon many factors. Forest is a national wealth. It is being denuded by illegal cutting. Considering the vast area involved and their situation in the far-off places from the habitat area, it is becoming increasingly difficult to control the illegal activities. Earlier after experiment of imposing condition of licence within 80 kmg. did not serve the purpose. More drastic measure to achieve the same result was thought of. The saw mills/ pits in or around the forest and the forest area can be and have been the recipients of the illegal forest produce. They have great potentiality of destroying the evidence of unauthorised denuding of the forest. Physical control, though possible theoretically is not always practicable. If in this context a total ban has been put on the establishment and operation of the saw mill/pits within the forest and a radius of 90 kms. therefrom, there is no legal justification to make a grievance. There has to be a balance between an individual and public interest, and in case of conflict, individual interest must yield to public interest. In the whole context, it cannot be said that this restriction, which is obviously in general public interest, is unreasonable or excessive. The reason is essentially regulatory in nature and is neither unguided, nor unreasonable nor discriminatory."

2. The only point canvassed in this petition is that the saw mill in question is situated in Keonjhar district of Orissa nearly whole of which consists of forest area, as a result, in that district there cannot be a saw mill/pit and hence vis-a-vis saw mills/pits in that district the restriction partakes the character of total prohibition and, therefore, the provision is unconstitutional.

3. The submission is ill conceived. The words "reasonable restrictions" in Article 19(6) of the Constitution can in appropriate case include even prohibition. There cannot be any categorical uniform answer to the question in which case the restriction can include total prohibition. Basic question is of reasonableness and this will depend upon several factors like the nature of business, the nature and effect of the restriction, the ambit of the right, the effect of the restrictions on the right and the nature of mischief the legislation seeks to remedy. Where prohibition is only with respect to exercise of the right in particular area or relating to a particular matter, there is no total prohibition of the right. The

prohibition becomes total only if the effect of restriction is to prevent a citizen from exercising his right at all. In order to determine whether total prohibition would be reasonable, the Court has to balance its direct impact on the fundamental right of the citizens affected thereby as against the greater public or social interest sought to be ensured. Judged on the above touchstone, by virtue of time only fact that a particular district is carved out of forest area, the restrictions does not become total and even if it becomes total, it is not unreasonable.

4. To conclude, the writ petition is dismissed. No order as to costs.

R.K. Dash, J.

5. I agree.