
(1991) 03 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 634 of 1989

The Divisional Forest Officer, Nandyal Division and Another

APPELLANT

Vs

Co-op. Labour Contract Society

RESPONDENT

Date of Decision : 25-03-1991

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 2, 44, 44(2A), 44(2B)
Andhra Pradesh Forest Produce Transit Rules, 1970 — Rule 5

Citation : (1991) 2 ALT 553 : (1991) 2 APLJ 15

Hon'ble Judges : Sardar Ali khan, J;M.N. Rao, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; E. Ayyapu Reddy, for the Respondent

Judgement

Sardar Ali Khan, J.—This Writ Appeal has been preferred by the respondents in W.P. No. 10491 of 1986 assailing the order dt. 21-2-1989 passed by a learned single Judge in the said Writ Petition.

2. The Writ Petition itself has been filed for issue of a writ mandamus directing the 1st respondent to release forthwith 1605 Bandi Tadakalu, 596 Bandi Jallalu, 42 Bendu Chapalu, seized from the members of the petitioner's society, and to pay a sum of Rs. 1 Lakh towards damages for the illegal and high-handed seizure of the above articles by the 1st respondent.

It would be in the fitness of things to refer briefly to the allegations contained in the Writ Petition, which was filed by the Co-operative Labour Contract Society, Santhajutur, Nandyal Taluk, Kurnool District. The said society was formed under the Co-operative Societies Act in 1933. The members of the society are labourers belonging to Scheduled Tribes and Scheduled Castes and a few members belonging to Backward Class. In the year 1953 these people were employed by private contractors in the forest coups for extracting bamboo and timber. The members are skilled artisans and they produce taties, baskets, mats and dollars from out of bamboo. In order to put their skills to good purpose, the society was

registered with a view to encourage the labourers and artisans to fend for themselves and to be free from exploitation of the contractors. The 2nd respondent in the writ petition ordered that the society should be supplied bamboos at concessional rates. These bamboos are converted into finished products, referred to above. The allegation in the writ petition is that the 1st respondent, viz., the Divisional Forest Officer, Nandyal Division, raided the houses of the members of the society, situate in the villages of Narayanapuram, Lingapuram and Singavaram on 25th, 26th and 27th February, 1986 and seized and carried away from their houses 1605 Bandi Tadakalu, 596 Bandi Jallalu and 42 Bendu Chapalu.all finished products from out of the bamboos supplied to the petitioner-society. The members of the society beseeched the 1st respondent to release the finished products seized from them which had been of no avail.

3. It is in the above back ground of events that the main legal proposition urged by Sri E. Ayyapu Reddy, learned counsel appearing for the respondent. Society in the Writ Appeal for the Petitioner--Society in the writ petition] will have to be considered. The first and the for most submission made by the learned counsel is that the finished products by no means come within the category of " forest produce" and, therefore, they can neither be confiscated nor can they be obstructed in transit. It is further urged by the learned, counsel that the members of the Petitioner-Society, who belong to Scheduled Castes, Scheduled Tribes and Backward-Class, being illiterates have been exploited and harassed to the limit of their patience by the authorities. The learned counsel also relies upon an order dt. 31-10-1977 passed by the Chief Conservator of Forests where under it was directed that the Divisional Forest Officers shall not obstruct the movement of finished goods made out of bamboos by the members of the Co-operative Societies as there is no bar to sell the finished goods any where the members of the societies like. It was, however, directed that, the forest officials may have a vigilance over the misuse of the bamboo supplied to the societies for their bonafide purpose.

4. In the counter affidavit filed by the Divisional Forest Officer, Nandyal Division several allegations have been levelled against the functioning of the society. The main thrust of the counter affidavit is that several complaints were received against the petitioner society that the members of the society are indulging in large scale illicit felling and transport of bamboos from the revenue forests adjoining the villages of Singavaram, Lingapuram and Narayanapuram. Therefore, a raid was conducted and huge quantity of green bamboos, split bamboos and bamboo made articles were found at the premises of the society. The authorities further state that there are sufficient reasons to believe that forest offences have been committed by the members of the society which require immediate action to be taken against the society. Further more, it is stated in the counter affidavit that the material stocked and found at the premises was obviously carved out of freshly cut bamboos and the labourers, who were indulging in the manufacture, were caught red-handed at the time of the raid. Since there was no departmental supply from the Government depot

during the past one month, the society was not in a position to justify the freshness and greenness of the bamboos seized. The authorities have also followed the cart tracks and certain lorry tracks which lead to the reserve forest area and large scale bamboo fellings inside the reserve forest were detected at the end of the tracks. These allegations levelled against the society had resulted in the action taken against them.

5. In view of the above rival allegations made by the Petitioner-Society and the respondent-authorities, it would be necessary to examine the matter in depth in the light of the provisions of the A.P. Forest Act, 1967 and the rules framed thereunder.

6. Section 2 (g) of the A.P. Forest Act, 1967 (Act No. 1 of 1967) defines "forest produce" in the following terms-

"(g) Forest produce" includes....

(1) the following whether found in, or brought from a forest or not, that is to say-timber, bamboos, charcoal, rubber, cacutchour, catechu, wood-oil, resin, natural varnish, bar, lack, mahua flowers, mahua seeds, myrobalans, tumki leaves, rousa grass, rauwolfia serpentina, adda leaves and gum.

(2) the following when found in or brought from a forest, that is to say.....

(i) trees, such leaves, flowers and fruits as may be prescribed and all other parts or produce not herein before mentioned of trees;

(ii) plants not being trees (including grass, creepers, reeds and moss and all parts or produce of such plants;

(iii) wild animals, wild birds, skins, tusks, horns, bones, silk cocoons, honey, was and all their parts or produce of animals and birds;

(iv) peat, surface soil, rock and minerals (including limestone and Jaterite) mineral oil and all products of mines or quarries; and

(3) such other produce as may be prescribed."

It is, therefore, clear that by no stretch of imagination finished products like taties, baskets, mats and dollas come within the definition of "forest produce". There is practically no controversy over this well settled proposition of law and fact that the term "forest produce" does not include the articles which have attained the shape of "finished products" in the hands of the members of the society. Nevertheless, at the same time it is beyond any pale of controversy that bamboo freshly cut or otherwise is a forest produce in every sense of the term. Illicit felling of such forest produce in the reserve forest constitutes an offence within the meaning of Section 44 of the A.P. Forest Act, 1967. If the members of the society have been indulging in illicit felling of the bamboos over and above the quota granted to them, then it is obvious that they will be liable to such action which may be taken by the authorities against them under law. Before

dealing with this aspect of the matter, we would like to clarify the position in so far as the finished products are concerned.

7. After hearing this Writ Appeal at a considerable length of time, we directed the Government Pleader to produce the relevant records so that the exact action initiated against the society may be known. The Government Pleader in this regard has produced before us a specimen form under Rule 5 of the Andhra Pradesh Forest Produce Transit Rules, 1970 which has been imposed on the Petitioner-Society to enable its members to remove the finished products made by them out of the bamboos supplied at concessional rates. Since the statutory form No. 11 is issued under Rule 5 of the A.P. Forest Produce Transit Rules, 1970 it may be necessary to have a look at Rule 5 of the Forest Produce Transit Rules 1970. Under Rule 5 (3) of the said Rules it is provided that the Divisional Forest Officer may, for the purpose of issue of permits in Form 11 for the forest produce to be removed from private lands, ascertain about the rights and title over the forest produce from such revenue officer of the district as may be specified by the Conservator of Forests. The central point to be considered in this regard is that Rule 5 (3) is primarily concerned with the question of removal of forest produce. If the product which is sought to be removed from live premises where it has been manufactured is not forest produce, then there is no question of Rule 5 (3) being applicable to such cases. It quite is clear from the foregoing discussion that in so far as the finished products are concerned, there is no question of the same being treated as forest produce and therefore we have no hesitation in holding that there is no warrant whatsoever to impose Form No. 11 on the members of the society who are free to remove and sell the finished products made by them. In fact, Sri A. Ananda Reddy, learned Government Pleader appearing for the appellants in the writ appeal has fairly submitted that Form No. 11 was resorted to only with a view to ensure that there is no misuse of the forest produce viz., bamboos supplied to the members of the society at concessional rates by the State authorities. Apart from that there is no sanctity of Form No. 11 as such and therefore the same cannot be held applicable to or thrust upon the members of the society.

8. The next point to be considered is the vital question of the alleged illicit felling of the bamboos in the reserve forest area. It is evident that bamboos fall clearly within the category of "forest produce. It is, therefore, clear that the authorities have got every manner of right to preserve the forest produce and prevent its illicit felling in the reserve forest area. Any forest produce, found in the hands of a person who is not authorised to hold it or in the hands of a person who is having excessive quantity of such forest produce is liable to be confiscated by the authorities in accordance with Section 44 of the A.P. Forest Act. Sri E. Ayyapu Reddy, learned counsel for the respondent--Society contended that the mere fact that the bamboos are being supplied at a concessional rate by the authorities does not mean that accountability should be trusted upon the members of the society who in any case are indigent and impoverished citizens eking out their livelihood by making finished products out of the bamboos supplied to them. In

other words, supply of bamboos at concessional rates may be in pursuance of a contract or an understanding as a welfare measure which does not arm the authorities with the power to impose undue checks on the members of the society which results in the crippling of the trade indulged in by them. We are unable to agree with the learned counsel for the respondent--Society, Sri E. Ayyapu Reddy that there cannot be any manner of accountability on the part of the members of the society with regard to the bamboos which are supplied to them at concessional rate. If the authorities have reason to believe that a forest offence has been committed in respect of any forest produce which includes bamboos, then they are entitled to take action u/s 44 of the Forest Act. under Sub-section (1) of Section 44 of the A.P. Forest Act it is provided that where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer. Under Sub-section (2) thereof, it is mentioned that every officer under this section shall place on such property or the receptacle, if any, in which it is contained a mark indicating that the same has been so seized. under Sub-section (2-A) of Section 44 powers of confiscation have been vested in the authorised officer where he is satisfied that a forest offence has been committed in respect thereof and he may. order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence but Under Sub-section (2-B) of the said section it is clearly provided as follows-

"(2-B) No order confiscating any property shall be made Under Sub-section (2-A) unless the person from whom the property is seized is given :

- (a) the notice in writing informing him of the grounds on which it is proposed to confiscate such property ;
- (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation ; and
- (c) a reasonable opportunity of being heard in the matter."

A reading of Sub-section (2-B) of Section 44 clearly shows that no order confiscating any property shall be made Under Sub-section (2-A) unless the person from whom the property is seized is given notice in writing informing him of the grounds on which it is proposed to confiscate such property. We have reproduced the main features of Section 44 to indicate the point That no notice whatsoever seems to have been given by the authorities to the members of the society before ordering confiscation of the excessive quantities of bamboo or indeed even the finished products which were at one time seized by them. In other words the main complaint is that the procedure prescribed u/s 44 has not been complied with. It may further be clarified that in so far as the finished products are concerned, even the Chief Conservator of Forests has issued an order dated 31-10-1977 wherein it is clearly stated that the Divisional Forest

Officers shall not obstruct the movement of finished products made out of bamboos by the members of the Co-operative Societies as there is no bar to sell the finished goods anywhere the members of the societies like. It is not known why this order of the Chief Conservator of Forests is not being carried out by the Divisional Forest Officers. The complaint of the members of the society is that the movement of the finished goods has been restricted by the forest authorities which is not warranted under the provisions of the Forest Act. In so far as the question of illicit felling of bamboos is concerned the authorities are free to investigate into the forest offences, if any, committed by (he members of the society in strict compliance with Section 44 of the. Forest Act. In yet another D.O. Letter No. 76169/90/W2 dated 4-3-1991 the Chief Conservator of Forests, on a representation made by the Shanthajutur Co-op. Society, Nandyal Taluk dt. 2-3-1991, has instructed the concerned Divisional Forest Officer not to insist for permits of the finished goods made out of bamboos by the members of the Co-operative Societies violating the orders issued earlier in this regard. It is clarified that the forest officials may however have a vigilance over the misuse of bamboo supplied to the societies for their bonafide purpose. In the light of these directions there should not have been any misunderstanding with regard to the movement of the finished products which do not fall within the definition of a forest produce. It is the duty of the Forest Officials to ensure that no illegal felling of the bamboos is made by (he members of the Society. If an offence is committed in connection with any forest produce, then the authorities are free to take such action as may be warranted under the provisions of Section 44 of the Forest Act. The learned single Judge before whom the case was argued has also taken the same view that while finished products do not come within the category of forest produce, in so far as the seized bamboos are concerned an enquiry is directed to be taken as envisaged under the provisions of Section 44 (2) (1) of the Forest Act. Yet another feature which requires consideration is the fact that the Government Pleader has been at pains to bring to our notice the fact that as a result of the seizure of the bamboos alleged to have been illicitly fell by the members of the society, 13 cases were booked against the members of the society, out of which 10 were compounded and 3 are still pending. This statement is vehemently denied by the learned counsel for the writ-petitioner-Society. Mr. E. Ayyapu reddy has vigorously contended that prosecutions have never been launched against the members of the society. He further submits that it is not correct to state that ten cases have been compounded and the properties seized were returned to the persons concerned. The statement in the counter affidavit filed on behalf of the respondent-authorities is at logger heads with what is now contended by the learned Government Pleader before us. After listing the ten cases which are stated to have been compounded, it is stated that the accused neither paid the balance "C" fees nor they preferred an appeal to the Conservator of Forests who is the appellate authority and hence the seized articles could not be released to them. Thereafter, a mention is made of the forest . offences 338/85-86 and 339/85-86 dated 25-2-1986 and 26-2-1986 stating that they have been prosecuted in the court of the Judicial Second Class

Magistrate, Nandyal. If this statement in the counter-affidavit is taken at its face value, then it is clear that neither the compounding fee was paid nor the finished products seized were returned to the persons concerned. Assuming that this is the correct state of affairs, then it is only fair and proper that since these finished products were not confiscated in accordance with the procedure laid down in Section 44 of the Forest Act, the same shall be returned to the persons concerned or in the alternative the admitted value of the seized finished products, viz. Rs. 70,000/- as stated in the counter affidavit, may be paid to the members of the society from whom the said products were seized, within a period of one month from the date of receipt of this order. Nothing contained in this judgment shall come in the way of the criminal proceedings, if any, pending in any court against the members of the society or during the course of the proceedings initiated u/s 44 of the Forest Act. It is needless to mention that if any compounding fee has been collected from the members of the society, as stated in the counter affidavit, it shall be returned to them as the collection of such compounding fee without complying with the procedure u/s 44 is unwarranted. It is further directed that the Divisional Forest Officers shall strictly comply with the orders of the Chief Conservator of Forests Ref. No. 108995/77/D1 dated 31-10-1977 followed by a D.O.Lr. No. 76169/90/W2 dated 4-3-1991.

9. With the above directions, the Writ Appeal is disposed of. There will be no order as to costs.