
(1972) 12 AHC CK 0033
In the Allahabad High Court
Case No : Special Appeal No. 476 of 1972

The State of U.P. and Others

APPELLANT

Vs

Rajendra Singh

RESPONDENT

Date of Decision : 20-12-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : AIR 1973 All 337 : (1973) 43 AWR 126

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Shanti Swarup, for the Appellant; V.N. Khare, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—The respondent Rajendra Singh was a forest contractor. By a letter dated August 28, 1971, the Chief Conservator of Forest notified the decision of the "Government that a public auction of Borang trees would take place and the auction would be confined only to such pencil manufacturers who had obtained a certificate from the Industrial Department. By another order dated September 7, 1971, the slate manufacturers were also made eligible to bid at the auction. The auction was accordingly held in respect of certain trees on September 28, 1971 and October 12, 1971. The respondent filed a writ petition challenging the aforesaid auction inter alia on the ground that the Government was not competent to exclude persons other than falling within the purview of the aforesaid letter dated August 28, 1971 and the order dated September 7, 1971 from participating in the bid and that the restriction so placed was arbitrary, illegal and hit by Articles 14 and 19 of the Constitution. A learned Single Judge of this Court held that even though the forest in which the Borang trees were situate constituted a reserve forest and was undoubtedly the property of the Government but since the State in a democratic constitution could not hold the said property as a monarch and was bound to administer it in such a way as to ensure the greatest amount of benefit to the public, the impugned directions

and the auction could not be upheld. In 10 holding he relied upon certain observations made by the Supreme Court in the case of Rashbihari Panda etc. Vs. State of Orissa, . On this view the writ petition was allowed and the directions for auction referred to above as also the auction sale of Borang trees held in pursuance thereof on September 28, 1971 and October 12, 1971 were quashed.

2. Aggrieved the State of U. P. and some of its officers have filed this special appeal. The case of Rashbihari Panda Supra was one relating to monopoly rights of the State in respect of trade in Tendu leaves. It was held that the validity of the law creating monopoly in favour of State to trade in a given commodity had to be judged by the test whether the entire benefit arising therefrom was to ensure to the State and the monopoly was not used as a cloak for conferring private benefit upon a limited class of persons. The scheme of selling Tendu leaves to selected purchasers or of accepting tenders only from a specified class of purchasers was not integrally and essentially connected with the creation of the monopoly and was not protected by Article 19(6)(ii) of the Constitution and bad, therefore, to satisfy the requirements of reasonableness under the first part of Article 19(6). We are, however, of the opinion that Rashbihari Panda's case has no application to the facts of the instant case inasmuch as the State in the case before us in support of the impugned directions has not relied upon any law creating monopoly to trade in a particular commodity. The contention raised on behalf of the State is that since the Borang trees in question were the property of the Government it was open to it to auction it in such manner as was considered expedient in order to give a fillip to a particular industry. In view of the utility of Borang trees for the manufacture of pencils and slates and as a consequence of the growth of pencil industry in the State, shortage of Borang wood had set in and it was as such considered proper to restrict the auction of these trees to only such pencil and slate manufacturers as were covered by the impugned directions. In State of Orissa and Others Vs. Harinarayan Jaiswal and Others, dealing with the Government's power to sell the exclusive privileges set out in Section 22 of the Excise Act of the Bihar and Orissa it was held

"if the Government is exclusive owner of these privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental rights to trade or carry on business in the properties or rights belonging to the Government."

Moreover, keeping in view the utility of Borang trees for the manufacture of pencil and slates and the shortage of Borang wood if the Government decided to permit only such pencil and slate manufacturers who came within the purview of the impugned directions it cannot be said that the restrictions so placed were unreasonable.

3. In this view of the matter the appeal succeeds and is allowed, the judgment of the learned Single Judge is set aside and the writ petition is dismissed. There will, however, be no order as to costs.