

(2004) 09 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 24534 and 25845-87 etc. etc. and 33863 of 2004

Timber Merchants' Association and Others

APPELLANT

Vs

Govt. of Karnataka and Another

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Karnataka Forest Act, 1963 — Section 102
Karnataka Forest Rules, 1969 — Rule 145

Citation : AIR 2005 Kar 77 : (2005) ILR (Kar) 3105

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Ramesh Ananthan, for the Appellant; Satish M. Doddamani and B.N. Prasad, HCGP, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Petitioners are questioning the validity of the Karnataka Forest (Amendment) Rules, 2004. As per the notification dated 19-5-2004 State of Karnataka in exercise of the powers conferred u/s 102 of the Karnataka Forest Act, 1963 amends the Karnataka Forest Rules, 1969. After presentation of these W.Ps. on 25-8- 2004 amended Rules of 2004 has been further amended in regard to the amendment of Rule 145. These two Rules are called in question in these writ petitions.

2. Amendment Rules, 2004 as notified on 19-5-2004 reads as hereunder :

"Amendment to Rules 145 ;

In Rule 145 of the Karnataka Forest Rule, 1969 after clause (c) the following Clause shall be inserted, namely :-

(D) Application for issue of pass shall be accompanied by transportation fee on forest produce at the rate of Rs. 200/- per Cum. For timber, Rs. 25/- per Cum. For firewood/ plywood and Rs. 5/- per pole, Re. 1/- per bamboo-cane in Form No. 28 or 29."

As per the notification dated 25-8-2004 substituted the Amendment Rules, 2004 which reads as hereunder :

"Amendment of Rule 145 :

Clause (D) of Rule 145 of the Karnataka Forest Rules 1969 shall be substituted as follows :

(D) Application for issue of pass shall be accompanied by transportation feu on forest produce at the rate of Rs. 50/- per Cum timber, Rs. 10/- per Cum for Firewood, pulp wood, Re. 1/- per pole, 20 paise per bamboo/cane in Form Nos. 28 and 29,

The rates mentioned in the Notification No. EEE 14 FDP 2004 dated 19-5-2004 in respect of Sandalwood in form No. 39 and 40 shall continue."

4. Three different types of parties are challenging these Rules. Some of the petitioners are carrying on the timber business by importing timber and selling the same within the State of Karnataka and some of them are after importing the timber and selling the same outside the State. Some of the petitioners are the cultivators and after obtaining permission to fell the trees, standing in their lands are transporting timber on their own and some of them are selling the timber. Some of the petitioners are timber merchants purchasing timber from individual owners of timber and are transporting the same from the place of felling to their place of business.

5. u/s 50 of the Karnataka Forest Act, 1963, State Government can make Rules to regulate the transit of various produce. Similarly, Government has power to levy fee to achieve the object of the Act. u/s 102 of the Act, State Government may by notification make Rules to carry out all or any of the purpose of the Act. In Bhadravathi Division Saw Mills Owners and Timber Merchants Association Vs. State of Karnataka, , this Court has interpreted the purpose and object, of the Karnataka Forest Act, 1963. According to the said decision, object of the Act is in order to put an end to smuggle forest produce, protect and safeguard the forest produce, protect forest, reserved forest, reserved trees of the State. Strict compliance with the Acts and Rules are necessary as the movement in the forest produce and timber within the State either by land or water or by sea or by rail is fully controlled and regulated by the Act. In order to regulate the activities of transportation of forest produce. Government has established several check posts and has also deployed several officers in order to check the smuggling activities and also to regulate the transportation from one place to another place. While regulating the activities of transportation of timber from one place to another, different types of passes are being issued by the State Government under Rule 145 of the Karnataka Forest Act, 1969. Without obtaining a pass, timber or any other produce shall not be transported from one place to another place. If limber or other forest produce is purchased from the Government, the person who has to transport the timber or produce need not pay any fee for obtaining such pass. But a person who has imported timber from other countries,

is required to obtain pass in order to transport timber from the port to place of destination in Form No. 29. Similarly, if a tree is cut and removed after obtaining permission from the Department by the owner of the land and if such timber is also required to be transported from the place of felling to the place of destination, in such case also a permit has to be obtained after payment in Form No. 28. Prior to the amendment of Rules, 2004, permits were being issued by the Government in Form Nos. 28 & 29 by collecting fee of Rs. 15/- per pass. As per the notification dated 19-5-2004 for transporting the timber, transporter has to pay a fee at the rate of Rs. 200/- per cubic meter of log and at the rate of Rs. 25/- per cubic meter in respect of fire wood and Rs. 5/- per pole and Re 1/- per bamboo or cane. This notification was challenged by the petitioners originally. Subsequently, as per the notification dated "25-8-2004 fee has been reduced in respect of timber to Rs. 100/- per cubic meter to Rs. 50/- and Rs. 10/- in regard to firewood or pulp wood and Re. 1/- in respect of pole instead of Rs. 5/- and similarly in regard to bamboo/cane it reduced to 20 paise from Re. 1/. In the last paragraph of the amended Rules of 2004 as per notification dated 19-5-2004 reads as hereunder :

"The proceeds realized shall be credited to the State Consolidated Fund and thereafter shall be transferred to the Mukya Mantri Grameena Rasthe Abhivrudhi Nidi. (Chief Minister's Village Road Development Fund)."

5. Petitioners are challenging these two notifications, contending that Amendment Rules, 2004 are not in the nature of fee, but it is in the nature of tax. According to them, tax is being collected under the guise of the Amendment Rules and the same has to be credited to the State Consolidated Fund and thereafter it has to be transferred to the Chief Minister's Village Roads Development Fund and therefore they contend that the fee payable under the Amendment Rules cannot be considered either as regulatory in nature or as compensatory fee. According to them, it amounts to extortion of tax and that the State has no legal competence to collect tax under the guise of fee in view of the provisions of the Karnataka Forest Act and the Rules made thereunder. They further contend that the fee is not collecting by them for the object of the Forest Act and the Rules made thereunder and the same is for a different purpose viz. for the formation of village roads which is not one of the objects of the Karnataka Forest Act. They further contend that State has no power to levy fee arbitrarily or exorbitantly without making use of the same for the purpose and object of the Act. Therefore, they contend that the Amendment Rules, 2004 as per notification dated 19-5-2004 as well as 25-8-2004 are required to be struck down as ultra-virus and arbitrary.

6. State has filed a detailed counter. According to the respondents, as per the amendment Rules, fee has been levied in order to improve the existing loads for the benefit of the petitioners but also for the benefit of others. Due to formation of the road, in addition to the petitioners, incidentally other public will also be benefited, therefore it cannot be held that the amendment brought to the

Karnataka Forest Rules, 1969. as bad in law. They further contend that considering the services rendered to the petitioners and in favour of the persons similarly situated to that of the petitioners, fee payable by them as per 1969 Rules was inadequate, considering the expenditure to regulate forest activities, fee has been reasonably enhanced. It is further contended that it is not only in the nature of regulatory but also in the nature of compensatory. Relying upon Sections 50, 102 and Rules 143 to 160 contends that the Government is rendering different types of services to the petitioners in order to achieve the object of the Act, therefore the fee fixed by the respondents cannot be stated to be arbitrary or without any power and request the Court to dismiss the petitions.

7. Petitioners relying upon the judgment of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , contends that in the instant case, fee is levied only for the formation of village roads under the Chief Ministers Fund and not for the services rendered to the petitioner either to regulate the forest activities or for any other purpose. Para 46 of the aforesaid judgment reads as hereunder :

"A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licenses may. be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, vide Seligman's Essays on Taxation, page 409, and if the money paid by license holders goes for the upkeep of roads and other matters of general public utility, the licensee fee cannot but be regarded as a tax."

Relying upon this passage, learned counsel for the petitioners contend that since State Government is levying fee in order to form village roads under the Chief Ministers Development Scheme, it cannot be considered as a fee but it has to be regarded as tax only. Supreme Court in *A.P. Paper Mills Ltd. Vs. Government of A.P. and Another*, has held as under :

"33. The question that remains to be considered is whether the enhanced licence fee under challenge is grossly high and excessive and therefore arbitrary. On a first look it appeared to us that the enhancement from Rs. 10,000/-to Rs. 18,00,000/-(maximum), was too high. We also did not find any material on record to show that there was justification for the enhancement of the fee to the extent prescribed. There was also no material on record to show existence of correlation between the expenditure incurred by the Government for enforcement of the Act and the Rules and the enhanced levy. We therefore inquired from the learned counsel appearing for the Government of A.P. whether the State Government is prepared to re-consider the matter and take a fresh decision regarding the extent to which the licensee fee should be enhanced. In response to the query the learned counsel has filed a copy of the communication bearing LR. No. 453/Lab.II/A-3/97 dated 7-7-2000 issued by Govt. of A. P. in Labour

Employment Trainitories (Lab-II) Department in which it is stated that some decisions have been taken regarding revision of the license fee particularly the maximum license fee-renewal fee to be levied on factories using power of 20,000 HP and engaging 2000 workers and above shall be limited to Rs. 2.5 lacs per annum as against the present limit of Rs. 18,00,000/-per annum."

In the said ease, fee was enhanced from Rs. 10,000/- to Rs. 18 lakhs per annum as maximum. No material was placed before the State of Andhra Pradesh to show the existence of co-relation between the expenditure incurred by the Government for enforcement of the Act and the Rules and enhanced levy. Therefore, Hon"ble Supreme Court has set aside the enhancement of fees from Rs. 10,000/- to Rs. 18 Lakhs per annum. Relying upon this passage, learned counsel for the petitioners contend that State has not placed any material before the Court to show the actual expenditure incurring by the State in order to regulate forest activities or to achieve the object of the Act. Therefore, they contend that the collection of fee at Rs. 50/- per cubic meter in case of timber, Rs. 10/- per cubic meter for firewood/pulp wood, Re. 1/- per pole, 20 paise per bamboo or cane as arbitrary. No doubt. State Government has contended that considering the expenditure required for the maintenance to regulate the forest activities fee has been enhanced reasonably. Along with the counter State has not placed any material before the Court to substantiate whether there is nexus between the expenditure and the fee charged by the State. Even during the course of the arguments, no material is placed before the Court by the State Government. It is no doubt true that in several judgments, Hon"ble Supreme Court has held that levy of fee need not be proportionate to the expenditure to be incurred by the State. But relying upon the said judgments, State cannot contend that Court cannot intervene with the levy of fee without placing any material before the Court. It is no doubt true that Supreme Court in several judgments have stated that even if there is any disproportionate to the actual expenditure. State Government can collect levy and incidentally such benefit can also be extended to other persons. Counsel for the petitioners have also relied upon the judgment of the Supreme Court reported in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, wherein it is held as here under:

"(B) Constitution of India - Schedule VIII - "Fee" character, features and Test - Fee meant to defray expenses of services not applicable towards object of general public utility as part of general revenue; converse not valid - General Public Revenues utilizable to meet expenses on administration of Civil Justice."

Relying upon this judgment, learned counsel for the petitioners submit that (at page 110 of AIR) :

"The co-relationship between the amount raised through the fee and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the co-relation but it would be sufficient that there is a broad and general correlation. But a fee

looses its character as such if it is intended to and does go to enrich the general revenues of the States to be applied for general purposes of Government. Conversely, from this latter element stems the sequential proposition that the object to be served by raising the fee should not include objects which are otherwise within the ambit of general Governmental obligations and activities."

Relying upon the above passage, they contend that in the instant case under the guise of levy of fee, petitioners are imposing tax in order to form the village road which cannot be considered as an object of the Forest Act and in other words they contend that Government is using the fee collected from the petitioners and others for general purpose of the Government and not for the object of the Forest Act. They have also relied upon the judgment of the Supreme Court reported in, *Sri Krishna Das Vs. Town Area Committee, Chirgaon*, which reads as hereunder (at page 2101 of AIR) :

"A fee is paid for performing a function. A fee is not ordinarily considered to be a tax. If the fee is merely to compensate an authority for services performed or as compensation for the services rendered, it can hardly be called a tax. However, if the object of the fee is to provide general revenue of the authority rather than to compensate it, and the amount of the fee has no relation to the value of the services, the fee will amount to a tax. In the words of Cooley, "A charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the Government whose officer or officers collect the charge is not a fee but a tax."

Relying upon this paragraph they contend ,that the amount to be collected under the amended ;Act cannot be considered as a fee. They have also relied upon the judgment of the Supreme Court, reported in *Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others*, wherein, it is held as under :

"6. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears, to us that in a fiscal matter it will not be proper to hold that, even in the absence of express provision, a delegated authority can impose tax or fee. In, our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring, the theory of implied intent or the .concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and circumstances in the case of *District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc.*, are entirely different. The exercise of powers by the Autonomous Jantia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the autonomous District was justified and such power was implied. The said decision cannot be

made applicable to the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others, also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee.

7. The High Court has referred to the decisions of this Court in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, and Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, and Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, . It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment; Nothing is to be read and nothing is to be Implied and one should look fairly to the language used. We are, therefore, unable to accept the contention of Mr, Goswami. Accordingly, there is no occasion to interfere with the impugned decision of the High Court. The appeal, therefore, fails and is dismissed with no order as to costs."

They have also relied upon the unreported judgment of this Court in W.As. 1899/1912/ 2001 and other connected writ appeals disposed of on 13-7-2001 (State of Karnataka v. Arya Vysya Srirama Co-operative Society Ltd.). In one of the paragraphs of the aforesaid judgment, Division Bench of this Court has held as hereunder :

"If it is fee, the next question is whether there is an element of quid pro quo. As pointed out by the Supreme Court in a catena of decisions, the distinction between the tax and fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is payment for a special benefit or privilege. The special benefit accrued to the individual or class of individuals is the reason for payment in the case of fees. "A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should, on the face of the legislative provision, be co-related to the expenses incurred by the Government in rendering the service," Of course, the element of quid pro quo does not necessarily mean and imply that a direct or personal benefit should be received by each and every payer of fee. Though it is not necessary to confer the whole of the beNefit on the prayers of fee, some special benefit must nevertheless be conferred on them which has a direct and reasonable co-relation to the quantum of fee. Obviously, the proceeds of the Kalyana Nidhi are not expended for any purpose underlying the Co-operative Societies Act or for the promotion of interests of the Co-operative Societies and its members. The benefit goes to a class of public who arc in no way associated with the working and functioning of Co-operative Institutions. The purpose for which the fund is utilised arc wholly unrelated to the purposes of the Act. No benefit or service accrues even indirectly to the Co-operative Societies or its members. Hence the

element of quid pro quo is utterly lacking and the levy in the nature of fee can not be justified in law, as held by the learned single Judge."

Relying upon these judgments, they contend that the Amendment Act of 2004 has to be struck down.

8. Learned Govt. Advocate relying upon the judgment of the Supreme Court in *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, and Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd.*, contends that there need not be any element of quid pro quo and if it is broadly and reasonably proved by the authorities who charge fees that the amount being charged for rendering the services of those on whom falls burden of the fee would be sufficient to charge fee. Relying upon these two judgments, he contends that writ petitions are to be dismissed.

9. In the backdrop of these judgments and considering the facts involved in these writ petitions, this Court has to examine whether there is any element of quid pro quo and whether the fee levied under the Amendment Rules, 2004 is in the nature of regulatory or in the nature of compensatory for the services to be rendered by the State to the petitioners and others or whether the fee to be collected under the guise of the amendment Rules has to be considered as tax.

10. As narrated earlier, petitioners and others were obtaining passes to transport timber from one place to another by paying fixed amount of Rs. 15/- per load. According to them, they were paying fee only for issuance of pass and no service is being rendered by the State. According to Govt. Advocate State has to regulate the activities of the petitioners and others in order to check smuggling activities of the forest produce. In order to check smuggling activities of the forest produce and to preserve forest, respondents are required to set up several check posts and to deploy several officers to regulate the activities. Alternatively, it is also contended by the respondents that out of the fee collected from the petitioners, same would be spent for the formation of roads which ultimately enure to the benefit of the villagers where forest is situated including the petitioners who require road for transporting the forest produce. Earlier petitioners were paying Rs. 15/- per pass. Now the same is enhanced based on the quantity or volume of the produce to be transported under one pass. Government has not placed any material to show the actual expenditure incurring by the Government in order to achieve the object of the Forest Act to verify whether there is nexus between the fee to be collected and the expenses being incurred by the State. Even if there is any disproportion in collecting the fee considering the expenses of the State, this Court cannot interfere with the levying of fee by the State. But in the instant case, petitioners are contending that levy of fee is arbitrary and there is no nexus between the services to be rendered by the respondents to the petitioners and others in collecting the fee, Relying upon the judgment of the Supreme Court in *A.P. Paper Mills Ltd. Vs. Government of A.P. and Another*, (cited supra) in the absence of materials placed by the respondents before the Court, this Court has to hold that the fee levied in

the instant case has to be arbitrary as the same has been enhanced from Rs. 15/- per load to Rs. 50/- per cubic meter. It is contended by the learned counsel for the petitioners that in each load petitioners are loading timber of not less than 200 cubic meters. If it is so, it works out to Rs. 1000/- per load. In other words, fee is enhanced from Rs. 15/- per load to Rs. 1000/-. If the State had placed some material before the Court, this Court would have been in a position to find out whether there is any nexus between the expenditure incurred by the State and in collecting the fee from the petitioners.

10A, According to the respondents, formation of village roads under the scheme of Chief Minister's Village Roads Development Scheme, petitioners as well as other villagers will also be benefited. According to them, fee is collected in order to achieve the object of the Karnataka State Forest. It is not the case of the State that roads in the forest area alone would be improved by collecting the fee from the petitioners and others. Division Bench of this Court in W.As. 1899-1912/2001 and connected matters has clearly held:

"The benefit goes to a class of public who are in no way associated with the working and functioning of Co-operative Institutions. The purpose for which the fund is utilised are wholly unrelated to the purpose of the Act. No benefit or service accrues even indirectly to the Co-operative Societies of its members. Hence the element of quid pro quo is utterly lacking and the levy in the nature of the fee cannot be justified in law, as held by the learned single Judge."

Relying upon this passage, this Court has to examine whether the formation of the village roads under the Chief Minister's Village Roads Development Scheme petitioners would be benefited. As pointed out earlier, it is not the case of the State that the roads would be formed in the forest area. If the roads are formed in different parts of the State, it cannot be said that it is for the benefit of the Act. In other words, it has to be held that fee is being collected to increase general revenue rather than to compensate and the amount of fee collected has no relation to the value of the services. In other words, It has to be held that respondents are collecting tax in the name of fee.

11. Normally Courts will not interfere with the powers of the Government in levying fee. Unless and until it is shown before the Court that the same is arbitrary and that there is no quid pro quo. in the instant case, under the guise of fee, State is collecting the revenue and the same is credited to the consolidated funds of the State and thereafter the same is being diverted to form the village roads. Therefore, this Court is of the opinion that in the name of the fee State is collecting the tax. As observed earlier, when the Government has not placed any material before the Court to show that the amount is being spent by it to regulate the activities of the Act, fee collected from the petitioners and others even if it were to be disproportionate to the actual expenditure, this Court would not have interfered with the amended Rules. But unfortunately, the amount is collected for the Chief Minister's Village Roads Development Scheme which cannot be considered as a fee. In these circumstances, this Court has to

hold that the Rules framed by the State under two notifications dated 19-5-2004 and 25-8-2004 as arbitrary and ultra vires.

12. In the result, these petitions are allowed. Notifications dated 9(19)-5-2004 and 25-8-2004 are hereby quashed. If the petitioners have paid any fee in terms of the interim order passed by this Court, State is directed to refund the same to them. Petitioners and others are paying only a sum of Rs. 15/- per pass. Rules were framed long back. Fee payable by the petitioners and others cannot be said to be adequate for the services rendering by the State. Therefore, it is always open for the State to bring amendment to these Rules in accordance with law. Allowing of these writ petitions shall not come in the way of the State to bring necessary amendment in accordance with law. Parties to bear their costs.