

SUPREME COURT OF INDIA

Hamid Raza

Vs.

State of M.P.

Petition No. 61 of 1956

(S. R. Das, C.J.I., S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo And M. Hidayatullah, JJ.)

09.02.1959

JUDGEMENT

HIDAYATULLAH, J.:

1. The petitioner Hamid Raza has moved this Court under Art. 32 of the Constitution. Previous to this the petitioner had obtained a certificate of fitness from the Judicial Commissioner of Vindhya Pradesh on 4-1-1956 to appeal against the order dated 7-5-1955 passed on writ application No. 25 of 1955. Though the petitioner deposited the amount of security, as well as the printing charges; he took recourse to Art. 32, as a more expeditious and adequate remedy.

2. The petitioner carries on business as a manufacturer of bidis under the name and style of Hamid Raza Manufacturing Company Rewa. In the year 1953, the Vindhya Pradesh Tendu Leaves Act, 1953, was enacted and it came into force on May 19, 1954. In pursuance of a provision therefor the petitioner applied to the appropriate authority on January 19, 1955, for a licence. His application is Annexure 'A'. On February 4, 1955, the Divisional Forest Officer, Rewa, declined to grant him a licence stating as the reason therefor as follows :

"With reference to your above application I have to inform you that no licence for Tendu Patti, will be issued as the Tendu Patti of this division were auctioned."

A week later the petitioner made a second application for licence. He also interviewed the Divisional Forest Officer and the Chief Conservator of Forest Vindhya Pradesh, Rewa. Though he heard nothing in reply to his application, it appears that he was informed orally that no licence would be granted to him.

3. The petitioner thereupon applied to the Judicial Commissioner, Vindhya Pradesh Art. 226 of the Constitution requesting for writ or writs to compel the grant of licence to him. Before the Judicial Commissioner the authorities made an offer, and undertook, to grant to the petitioner a licence to purchase Tendu leaves from the contractors to whom the forest areas in Vindhya Pradesh had previously been auctioned. Though the petitioner did not accept this offer, the Judicial Commissioner considered it fair enough and in view of it he declined to issue a writ and dismissed the petition. As previously stated the Judicial Commissioner, Vindhya Pradesh, granted a certificate of fitness on which action was also taken, but the petitioner moved this Court under Art. 32 of the Constitution separately.

4. In this petition the petitioner challenged Section 3 of the Vindhya Pradesh Tendu Leaves Act 1953 (hereinafter called the Act) as being contrary to the provisions of Part III of the Constitution and thus void. He relied in this connection mainly upon Arts. 14 and 19 of the Constitution. At the hearing this mode of attack was abandoned and the case was confined to the restrictions proposed to be imposed by the licence which were described as unwarranted and void.

5. Before dealing with these contentions it is necessary to examine briefly what the Act and the rules under it provide. The Act declared in the preamble that it was to provide for "reasonable restrictions on the trade and commerce of (sic) Tendu leaves in Vindhya Pradesh", which it was further declared, were necessary in the public interest. By Ss. 3 to 6 a system of licensing was introduced. Section 3 of the Act provided as follows :

1. No person shall, unless he obtains a licence from the licensing Authority, or is exempted by the State Government under sub-section (3), purchase and transport for trade Tendu leaves in any part of Vindhya Pradesh.

2. A licence under this Act shall be granted -

(a) on payment of such fees as may be prescribed,

(b) for such period as the Licensing Authority may direct;

(c) in such form and contain such particulars as the Licensing Authority may direct either generally or in any particular instance, in this behalf; and

(d) subject to such restrictions and on such conditions as may be prescribed.

3.

Under Section 2 (f) the word "Prescribed" was defined as "prescribed by the rules framed under the Act". It may be pointed out here that exemption was granted only to tenants in respect of Tendu trees standing on their holdings, by Notification No. 22/XV/F/54, dated 8-6-1954. It would thus appear that no person other than a tenant, who did not obtain a licence, was able to purchase or transport Tendu leaves in Vindhya Pradesh after the Act came into force. In another part of the Act there was a provision to grant contracts, for collection and sale of Tendu leaves in the whole or any part of Vindhya Pradesh from trees belonging to the Government, to contractor accepted by Government. These contracts under S. 7 were upon to licencees and were so granted in auctions which were held. For the purpose of granting such contracts the whole of Vindhya Pradesh was divided into 'areas'. So long as a contract lasted, the contractor had the sole right throughout the area or areas included in his contract to collect Tendu leaves from forest areas, Government owned waste lands and all other lands 'but not including Jagir lands still held by Jagirdars and land held by tenants'. The other provisions of the Act deal with ancillary matters connected with the grant of licences and contracts and include penalties for breach of the provisions. Section 17 of the Act conferred powers on the State Government to make rules for the purpose of carrying out the provisions of the Act by Notification issued in the official Gazette.

6. On January, 25 1955, the Vindhya Pradesh Tendu leaves Rules, 1954 (hereinafter called the Rules) came into force. They were published in the Vindhya Pradesh Gazette No. 157, dated 11-2-1955. Rule 3 provided for the division of forest ranges in Vindhya Pradesh into convenient units and for the auction of the right to collect Tendu leaves from one or more such units including areas

belonging to Government to contractors. It was also provided that in units and other areas for which no contract was given the purchase, collection and sale of Tendu leaves would be allowed to licensees. Rule 4 provided that in the units and other areas for which a contract had already been given under R. 3 a licence to purchase, collect, transport or sale of Tendu leaves would, during the subsistence of the contract, be granted to contractors only. In other areas including Government land for which no contract was given the licences were to be allowed to collect Tendu leaves provided they paid a royalty at a rate to be specified in their licence. The rest of the rules are not pertinent to this matter and need not be referred to here.

7. As a result of the decision of the Judicial Commissioner, Vindhya Pradesh, the Government issued a licence to the petitioner in Form No. I prescribed under the rules. It is Annexure 'E' However, in view of the contracts already given to contractors in the entire Vindhya Pradesh, the form was amended by the licensing authority to show that it was a licence for purchase from contractors in Vindhya Pradesh. It is this condition which the petitioner impugns (a) as being in excess of the powers conferred by the Act and the rules on the licensing authority, and (b) as being in violation of his fundamental rights to carry on any occupation, trade or business and to acquire hold and dispose of property. According to the petitioner the impugned condition did not flow from the rules and was discriminatory and created an unwarranted restriction upon his rights guaranteed by Arts. 14 and 19.

8. It was contended before us that the Act did not contemplate imposition of conditions except by rules. The word 'prescribed' was defined to mean 'prescribed by the rules framed under the Act'. Section 17 gave the power to frame rules to the State Government and not to any other authority. The rules prescribed the Form in which the licences were to be granted and the Form itself showed the conditions under which the licences operated. It would, therefore be plain that any condition not so included in the rules or the Form could not be imposed by any authority in Vindhya Pradesh. The first of the amendment of the Form of the licence is to restrict the operation of the licence in a manner not contemplated either by the rules or the unamended Form.

9. The State of Madhya Pradesh (which stands substituted for the State of Vindhya Pradesh after the reorganization of States) in answer to the petition stated that the contractors were sold not only the right in leaves in forest trees but also the right in leaves on trees standing on Jagir lands or on the holdings of the tenants. The State Government produced the Form of contract and further pointed out that the contractors were assured that they would have the sole right to collect, transport or sell Tendu leaves from all lands including lands in Jagirs and belonging to tenants. The State Government in view of this justified the imposition of the restrictive condition in the licence and averred that the contractors would be aggrieved if the petitioner were able to purchase leaves from tenants and Jagirdars in breach of the assurance given to the contractors.

10. The scheme of the Act as well as the rules which we have analysed above clearly indicate that it was not contemplated that the Government or the licensing authorities would dispose of the leaves from trees standing on Jagir land or tenants' holdings. If the State Government thought fit to do so, it manifestly enough went outside the Act and the rules. No doubt, having done so the State Government, finds itself in an unhappy position because a licensee, who is not a contractor, is free even under the Act and the rules to deal with Jagirdars and tenants in respect of leaves from trees belonging to them. The State Government's justification of the imposition of the condition in the licence does not rest upon anything that may be gathered from the Act and the Rules.

11. The Form of the licence is prescribed and the conditions are also indicated by the rules. The

authority to add a condition to the licence must be found either in the Act or the rules. The State Government was unable to point out any provision in the Act and the rules which enabled the licensing authorities to restrict the operation of the licence to purchases from contractors only. The addition therefore of this condition even though done with bona fide motives is not justifiable under the Act or the rules.

12. The effect of the addition of this condition is clear. The Act and the rules desired that there should be liberty to the licencees to purchase tendu leaves from Jagirdars and tenants. Their lands were not meant to be included in the contracts given to contractors. The contractors, it is admitted, are themselves Bidi manufacturers and by selling the right to collect tendu leaves from every tree in Vindhya Pradesh to them creates a monopoly in their favour to the exclusion of other licencees who must purchase leaves for their business at prices to be demanded by the contractors. Naturally enough the contractors would see to it that other rival traders do not obtain the leaves at prices which would enable them to compete in the manufacture of Bidis. In our opinion, therefore, the inclusion of an additional term in the licence would seriously affect and even destroy the business of manufacturers like the petitioner. The addition of such a condition is not justified by S. 3 (2) (c) as was claimed by the State, nor does R. 4 save it. That rule applies only to such trees as belong to Government.

13. In view of the fact that there is a clear disregard of the Act and the rules by the addition of an unwarranted clause to the licence and of the fact that the clause itself amounts to an unreasonable restriction upon the rights of the petitioner guaranteed under Part III, the inclusion of the words "from contractors in Vindhya Pradesh" in the licence must be declared to be both ultra vires and void. This case is governed by the principle laid down in *Rashid Ahmed v. Municipal Board, Kairana*, (1950) SCR 566: (AIR 1950 SC 163), because the restriction imposed by the licence cannot be said to be reasonable within the meaning of Art. 19(6) of the Constitution. We direct that the words "from contractors in Vindhya Pradesh" shall be omitted from the licence granted to the petitioner. As a result the petitioner will be able to get leaves only from the contractors in respect of Government-owned trees as is contemplated by the Act and the rules, and in respect of trees in Jagirs or on tenants' holdings the licence will enable him to obtain leaves in the open market.

14. The petition is thus allowed as above.

15. The costs of this petition shall be borne by the respondent.

Petition allowed.

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