

State of Bihar and Others

Vs

Ranchi Timber Traders Association

Civil Appeals No. 2084-90 of 1984

(M. M. Punchhi, K. Venkataswami JJ)

23.07.1996

JUDGMENT

1. Eight writ petitions were allowed by Division Bench of the Patna High Court holding that the Rules for the establishment of Sawpits and establishment and regulation of depots framed in the year 1983 by the State Government, Bihar in purported exercise of powers conferred under Section 41, 42 and 76 of the Indian Forest Act, 1927 were in excess of delegation or authorisation, exceeding mandate, and hence a colourable exercise. On the basis of these rules, a public notice was given by the Chief Conservator of Forest, Bihar to the effect that the rules required all owners of Saw-pits and depots to obtain licences in terms by 28-2-1983, and as a consequence if any Saw-pit or depot was found unlicensed from 1-3-1983, that would attract action and penalties under the rules. We are required to examine the correctness or otherwise of such, view of the High Court.

2. Straightway, we go to the Act and the provisions whereunder the State Government claims to have framed the 1983 rules. As is clear from the prefatory portion of the rules, those are Sections 41, 42 and 76 of the Indian Forest Act, 1927. Section 41 empowers the State Government to make rules to regulate the transit of forest produce. Sub-section (1) of Section 41 provides that the State Government can make rules regulating the transit of all timber and other forest produce by land or water Clause ((e) of sub-section (2) provides for the establishment and regulation of depots to which such timber or other forest produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other forest produce shall be brought to, stored at and removed such depots. Section 42 is supportive of Section 41 inasmuch as it empowers the State Government to frame rules prescribing penalties for breach of the rules in terms of punishment of imprisonment and imposition of fines. Section 76 apparently is all comprehensive for it provides the State Government the additional powers to make rules. Clause (d) thereof, authorises the State Government to make rules generally, to carry out the provisions of the Act.

3. Now, the High Court had taken the view that regulation of the business of timber and forest produce at Saw-pits and depots is not covered by either of the three sections above-mentioned.

4. On hearing counsel for the parties on the subject, and giving our earnest consideration, we get to the view that the conclusion of the High Court was totally erroneous. The variety of subject provided in the sub-heads of sub-section (2) of Section 41 are precluded with the expression "in particular and without prejudice to the generality of the foregoing power". Wholesome power stands conferred on the State Government to make rules under sub-section (1) of Section 41 with regard to

transit of timber and other forest produce by land or water. Conferral in such powers in it the power to frame rules in order to regulate place for stoppage, reporting, examination and marking of timber or other forest produce. Necessarily, duty, fee royalty or charges due thereon become due, if imposed. In order to avoid breach of the rules., Section 42 Gets into line. Then comprehensive power on the subject is given generally to the State Government as additional powers to make rules to carry out the provisions of the Act. No one can be permitted to deny that regulating the activity of keeping a saw-pit or a depot is not an activity to which the provisions of the Indian Forest Act, 1927 would not be attracted. Thus, requiring all the saw-pit holders or depot holders to obtain regulatory licences squarely fall within clause (d) of Section 76, if not, (without holding so) under the power to regulate transit by land or air available under Section 41 of the Act. These three provisions namely Sections 41, 42 and 76 reflect an integrated scheme to carry out the provisions of the Act and as the preamble of the Act is suggestive to consolidate the laws relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. The power to regulate by license the upkeep of saw-pits and Depots is in any event ancillary to the main power. We, therefore, have no hesitation to upset the view of the High Court by allowing these appeals and in this manner dismissing the writ petitions which were preferred by the respondents before the High Court. We are doing so because it is otherwise not disputed that the second question framed by the High Court relating to the vires of the Act on the touchstone of Articles 14,19 and 301 of the Constitution, left undecided by the High Court, is not required to be decided by us. We allow the appeals accordingly. No. costs. Appeals allowed.