

MADHYA PRADESH HIGH COURT

N.K. Doongaji

Vs.

Collector, Surguja

Misc. Petn. No. 73 of 1961
(P.V. Dixit, C.J. and K.L. Pandey, J.)

31.08.1961

JUDGMENT

Dixit, C.J.

1. The petitioners in this case are all liquor contractors holding licences for the manufacture and sale of country liquor. On 3rd and 4th November 1960 the Divisional Forest Officer, Korea Division, sent to the Tahsildar, Baikunthpur, requisitions for recovery of certain amounts from the petitioners as forest dues. The forest dues were stated to be on account of mahua leaves and fuel taken by the petitioners from certain forest coupes for the manufacture of liquor. The recovery of the amount was sought as arrears of land revenue. The petitioners drew the attention of the respondents to the decision of this Court in *Surajdin Laxman v. State of M.P.*,¹ and pointed out that under that decision the recovery of the forest dues over and above the amount at which their bids were accepted for grant of licences was illegal. The respondents however, persisted in their demand. The petitioners have now filed tills application contending that the recovery sought to be made from them has no statutory basis whatsoever. They pray that the requisitions and recovery warrants issued against them, and the recovery proceedings initiated, all be quashed.

2. This petition must be granted. The present case is indistinguishable from the case of 1960 MP LJ 39 : AIR 1960 Madhya Pradesh 129 (supra). In that case also, as here, the Government sought to recover from the liquor contractors a surcharge of 7-1/2 per cent over the amount of the bid on account of the privilege granted to the contractors of removing fuel and mahau leaves from Government forests; the recovery sought to be made as arrears of land revenue was attempted to be justified under the Rules framed under Section 32 of the Indian Forest Act as also on the ground that it

amounted to royalty and could, therefore, be recovered as arrears of land revenue under section 143 of the M.P. Land Revenue Code. The licensee had not specifically agreed to avail himself of the privilege of removing any forest produce; nor did he represent to the Government that he wanted to remove any fuel and mahua leaves from the forest and pay for them. It was held by a Division Bench of this Court that the imposition of surcharge was without any authority of law and the recovery of the amount as arrears of land revenue was wholly illegal. In view of the decision in Surajdin Laxman's case, 1960 MPLJ 39 : AIR 1960 Madhya Pradesh 129 (supra), learned Additional Government Advocate found himself unable to support the recovery sought to be made from the petitioners. The various requisitions sent by the Divisional Forest Officer on 3rd and 4th November 1960 to the Tahsildar for the recovery of amounts stated therein from the petitioners and the recovery proceedings initiated thereon must, therefore, be quashed.

3. Before leaving this case it seems to us necessary to say that we do not appreciate the attitude of the opponents in persisting in their demands against the petitioners even after their attention had been drawn to the decision of this Court in 1960 MP LJ 39 : AIR 1960 Madhya Pradesh 129 (supra). That decision unmistakably and in clear words said that the recovery of surcharge on account of fuel and mahua leaves collected by the liquor contractors was wholly illegal. But strangely enough, despite this decision the opponents pressed their demand against the petitioners and on 22nd September 1960 the Under Secretary to Government in the Separate Revenue Department addressed a letter to the Excise Commissioner saying that the decision of this Court in the case of Surajdin Laxman, 1960 MP LJ 39 : AIR 1960 Madhya Pradesh 129 (supra) was "not binding on the Government in its dealing with those contractors who were not parties in the case before the High Court" and that in regard to those contractors who were not parties the "recovery of cess should continue as usual till the same is prohibited by a competent Court" (Annex. R-4 to the Return).

Now, it is no doubt true that a decision given by a court is binding only on the parties to the proceedings. But the Government was bound by the ratio of the decision in Surajdin Laxman's Case, 1960 MP LJ 39 : AIR 1960 Madhya Pradesh 129 and the legal position expounded therein as regards the validity of the surcharge. One would have expected the Government to give effect to that decision by applying it to cases indistinguishable from the case of Surajdin. That they failed to do so leads only to three conclusions namely, either that the authorities did not care to read the decision of this court in Surajdin's Case, 1960 MP LJ 39 : AIR 1960 Madhya Pradesh 129 or that

if they did read, they failed to understand it; or that if they read and understood it, then they sought to get rid of the effect of the decision by relying on a puerile technicality. We condemn in no uncertain terms such an attitude on the part of the authorities indicating little respect for the decisions of this Court and desire it to be known that as often as it may be necessary we will sternly repress such an attitude.

In this connection it would be pertinent to reproduce the observations which Chagla C.J. made in *Firm Kaluram Sitaram v. Dominion of India*,² while dismissing a suitor's claim for compensation from railway administration for the loss of some silver bear due to the dishonesty of a railway employee. The learned Chief Justice said :

"Now we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the state is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges as an honest person."

These remarks apply with greater force here as no legal defence of any kind was open to the respondents in resisting the petitioners' claim that the recovery sought to be made was wholly illegal. But for the recalcitrant attitude of the opponents, the petitioners would not have been driven to the necessity of filing this petition.

4. For these reasons this petition is allowed. The various requisitions sent by the Divisional Forest Officer, Korea, to the Tahsildar Baikunthpur, on 3rd and 4th November 1960 for the recovery of the amount stated therein and the recovery proceedings started on those requisitions are quashed. The petitioners shall jointly have costs of this petition. Counsel's fee is fixed at Rs. 250/-. The outstanding amount of the security deposit shall be refunded to the petitioners.

Petition allowed.

Cases Referred.

1. 1960 MP LJ 39 : AIR 1960 Madh Prad 129
2. AIR 1954 Bom 50