ORISSA HIGH COURT

Kasi Prasad Sahu

Vs

State of Orissa

O.J.C. No. 174 of 1961

(R.L. Narasimham, C.J. and R.K. Das, J.)

16.10.1962

JUDGMENT

Narasimham, C.J.

1. This is an application under Article 226 of the Constitution by an Excise Contractor residing in Bolangir district challenging the validity of the Orissa Timber and Forest Produce Transit Rules, 1958 (hereinafter referred to as the Rules) requiring a permit from the authorized forest officials for transit of mahua flowers and other forest produce even though they have been collected from the lands of private parties and not from lands or forests belonging to Government. The Divisional Forest Officer, Bolangir Division, made it absolutely clear that Mahua flowers collected from trees standing on the lands of the tenants may be sold by them to anyone they liked and that there was no control over the sale of such flowers. But he pointed out that the transit of such flowers cannot be made without a permit under the Rules and that the permit would be issued free of costs on a proper application by a Forest Officer. The petitioner however felt aggrieved by the said rules and the main contentions on his behalf by Mr. Das are as follows:

(i) A careful scrutiny of the various provisions of the Indian Forest Act would show that the provisions of the Act dealing with forest produce are applicable only to such forest produce as is collected from Government lands or forests and not from the lands of private parties; and
(ii) In any case such interference with private ownership of property would offend Article 19 of the Constitution and also Article 301 of the Constitution.

2. It is necessary to notice some of the relevant provisions of the Indian Forest Act. The preamble and the long title of the Act show that the Act was intended to consolidate the laws relating to forests, the transit of forest produce, and the duty livable on timber and other forest produce. Thus transit of forest produce was dealt with as a separate subject under the Act. The Act does not say that the forest produce must necessarily belong to Govt. Clause (4) of Section 2 (Interpretation Section) divides forest produce into two classes. One class is defined in sub-clause (a) and the other class is defined in sub-clause (b) of clause (4). 'Mahua flowers' (mahua seeds)

'myrabolam' etc. are described in sub-clause (a) and it is expressly stated that these articles shall be forest produce whether found in or brought from a forest or not. But in sub-clause (b) of clause (4) while describing other forest produce it is expressly stated that they shall be forest produce only when found in or brought from a forest. Hence the Legislature by express definition made it absolutely clear that mahua flowers shall be deemed to be forest produce for the purpose of the Indian Forest Act whether they were brought front a forest or not. Giving the natural meaning to the words the obvious inference is that mahua flowers from trees grown even on private lands would come within the definition of forest produce. "Timber" has been separately defined in clause (6) of the interpretation section. But the expression has also been included in the definition of 'forest produce' given in sub-clause (a) of clause (4) of Section 2. Apparently the Legislature felt the necessity of giving a wide meaning to the expression 'timber'. Chapters II, III and IV of the Act deal with Reserved Forests, village Forests and Protected Forests and they are not material for our purpose. Chapter V deals with control over forests and lands not being the property of Government. The provisions of this Chapter would themselves show that the Forest Act is intended to be a piece of legislation not only in respect of Govt. forests but also in respect of forests and lands not belonging to Government. Chapter VI deals with duty on timber and other forest produce. This chapter also is not relevant. Chapter VII deals with control over timber and other forest produce in transit. Section 41 confers on the State Government the power to make rules to regulate the transit of forest produce. The power conferred under this section is merely of regulatory nature in respect of transit of timber and other forest produce. The rules have been framed under this section. It was urged - though somewhat faintly - that the words "timber" and "other forest produce" occurring side by side would support the view that the word "other" must be given an ejusdem generis construction and that the transit of only such forest produce as is analogous to 'timber' could be regulated by Government in exercise of the rule making powers conferred under this section. This argument must be rejected because once the interpretation clause has given a definition for the expression 'forest produce' and the expression 'timber' has also been defined separately the question of applying the ejusdem generis construction with a view to further restrict the scope of the expression "forest produce" in Section 41 does not arise. Section 43 says that Government or any forest officer shall not be liable for any loss or damage to any timber or other forest produce at any depot of Government established under the rules made under Section 41. This special power, indemnifying Government and Govt. servants would not have been conferred if the forest produce referred to in Section 41 was limited to forest produce grown on the property of the Government only. In that case there would be no question of indemnifying Government from any loss or damage occurring to their own property. Thus section 43 read with Section 41 would by necessary implication show that in section 41 also 'forest' produce' includes not only forest produce grown on or collected from the property of Government, but also that grown on or collected from the property of private individual. Chapter VIII which deals with collection of Drift and Standard Timber also supports this view. Under Section 45 certain classes of timber shall be deemed to be the property of Government until title thereto is proved, thereby impliedly recognizing the position that some timber may not be the property of Government. Similarly Chapter IX deals with penalty and procedure and recognizes that some forest produce may, in the first instance, not be the property of the Government. Section 52(1) authorizes the seizure of any forest produce in respect of which a forest offence has been committed. Section 53 authorises a Forest Officer to release such property in favour of the owner on his executing the necessary bond. This section by implication shows that the forest produce may belong to some private owner. It is only when such property is eventually confiscated by the Court, after conviction of the offender under the Forest Act, that by

virtue of Section 60 the property becomes the property of Government. Chap. XII deals with additional powers of Govt. to make rules in respect of timbers, but this is not material for our purpose.

3. Thus though most of the sections of the Indian Forest Act deal with Government forests and Govt. lands and forest produce grown on such property, nevertheless, there are many sections - especially those in Chapter VII which confer regulatory power on Government to control movement of forest produce even though the produce may not be the property of Government. It is well known that Government may exercise regulatory power over movement of property even though the property may not belong to Government.

4. The rules also do not go further than what has been provided in Section 41 of the Act. They merely prescribe the Rules for the movement of timber and other forest produce and Rule 4 authorizes the Forest Officer to issue a transit pass for movement, by road or rail or water of any forest produce - free of cost. But any transit of such produce by a owner for his own *bona fide* domestic use is exempted from the scope of this Rule, and no transit permit is required for that purpose. Rule 6 provides a right of appeal against an order of a Forest Officer granting transit permit under Rule 4. The other rules are all of an ancillary nature.

5. Thus, on a mere interpretation of the expression "Forest produce" and bearing in mind the provisions of Section 41 and other sections of the Act mentioned above it must be held that Government have the power by rules, to regulate the transit of forest produce as defined in the Act even though the said produce may not be the property of Government.

6. Mr. A. Das for the petitioner, relied very much on Section 85-A inserted in the Indian Forest Act by the Adaptation Order of 1950. That section runs as follows:

> "85-A: Nothing in this Act shall authorize a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned."

In my opinion this section was inserted by the President by the Adaptation Order of 1950 to save the rights of the Central Government and the Governments of other States. It has absolutely no bearing on the question as to whether the other sections of the Act could as a matter of construction be held to apply only to forest produce which is the property of Government. I have already shown that some of the sections in Chapters VII, VIII and IX show clearly that the Act contemplates regulation and control over forest produce which does not belong to Government.

7. It is now necessary to refer to some of the decisions cited by Mr. A. Das. He first referred to an old Sind decision reported in *Mitho Rashid v. Emperor*[1], where it was held that Rule 4 made under Section 41 (b) of the Forest Act was ultra vires. But a careful study of that decision would show that the learned Judges held the rule to be ultra vires on the simple ground that it did not conform to the language of Section 41 (b) of that Act. They did not say that, as a matter of construction, Section 41 (b) must be deemed to be restricted to forest produce or timber which is property of Government. Mr. Das then referred to *Satyaranjan Sen Gupta v. Mohammad Sarfaraj*[2], where it was held that the River rules under the Chittogong Hill Tracts Act, framed

under section 41 of the Forest Act related to reserved forests of Government. This decision will not be of any help here because the contents of the River Rules of the Chittogong Hill Tracts Act are known. The learned Judges said that these rules obviously referred to reserved forests of Government. In the Rules themselves in that case clearly referred to Reserved forests of Government it is obvious that they could not apply to timber brought from private lands. *Sidheswar Panda v. State*[3], on which also Mr. A. Das relied, is clearly distinguishable because, there, the provisions of the Forest Act that came for construction were Section 26 (f) and Section 26 (g) and these clauses, by their very terms, applied only to reserved forests. Similarly *Gulabu v. Emperor*[5], is also distinguishable because there the accused was convicted of the offence of theft; it is obvious that no one can be convicted of the offence of theft if he was himself the owner in possession of the article alleged to have been stolen.

8. As regards the constitutional points raised by Mr. Das it is unnecessary to discuss them at length. It is too elementary that mere regulatory power can never amount to an unreasonable restriction either under sub-clause (f) or sub-clause (g) of clause (1) of Article 19. By expressly stating that the transit permit shall be given free of cost and also by giving a right of appeal against the order of the Subordinate Forest Officer the Rules have clearly satisfied the tests of reasonableness. It cannot also be seriously contended that the Rules affect freedom of trade, in violation of Article 301. In the recent Rajasthan Case, (*Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*[4]), the Supreme Court have made it absolutely clear that a mere regulatory or compensatory statute will not offend Article 301. Apart from this objection, by virtue of Article 305 an "existing law" is saved from the operation of Article 301. The Indian Forest Act is undoubtedly an "existing law". It is true that the rules were framed in 1958 after the coming into force of the Constitution, but they were framed under Section 41 of that Act which is a pre-Constitution Act and they do not go beyond the scope of that section of the Act. Hence they would get the protection of Article 305. For these reasons we are satisfied that there is no merit in this petition. It is accordingly dismissed with costs. Hearing fee Rs. 100/- (Rupees one hundred only.)

R.K. Das, J.

9. I agree.
Petition dismissed.

Cases Referred.

[1] 17 Cri LJ 364: (AIR 1916 Sind 8)
[2] 21 Cri. LJ 659
[3] AIR 1954 Ori16
[4] AIR 1962 SC 1406
[5] AIR 1939 Lah 469