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**(1985) 01 KAR CK 0001**

**Karnataka High Court**

**Case No:** C.R.P. 783 of 1980 & connected cases

M/s Kothari and Co.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision:** Jan. 2, 1985

**Acts Referred:**

- Karnataka Forest Act, 1963 - Section 71D

**Citation:** (1985) 1 KarLJ 320

**Hon'ble Judges:** P. A. Kulkarni, J

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### **Judgement**

@JUDGMENTTAG-ORDER

1. C.R.P. 783/80 by M/s Kothari and Co., is directed against the order dated 5.1.1980 passed by the District Judge, Mysore, in Misc. Appeal No. 27/80 affirming the order dated 11.1.78, passed by the Divisional Forest Officer, Kollegal, ordering the confiscation of the lorry in question.

C.R.P. 1216/80 by respondent No. 3-Rahim is directed against the same order confiscating the lorry in question.

2. On receipt of information that sandal wood was being smuggled from Minimum side, the Range Forest Officer, Rampuram and the Range Forest Officer, of the Mobiele Squad, Kollegal went to Dinnalli road on the night of 26.8.77 and kept a watch. After midnight, in the early hours of 27.8.77, they found a lorry bearing No. MYN 5565 parked near the house of one Pakiranaika in Gollaradibba village. On suspicion they checked the said lorry and found in the said lorry 133 billets of sandalwood and a bundle of small sandalwood pieces in all worth Rs. 75,000/-. They were covered with tarpaulin over which farm manure had been piled up. One Mohammed Peer Saheb and one Shiva the cleaner of the lorry were found in the said lorry. Two number plates bearing registration No. MYM 5421 were found in the cabin. Even on the body of the said lorry the number of the said lorry had been painted as MYM 5421 and the name of the owner had been painted as S.A. Rahim.

On enquiry with persons who were found in the lorry, it was learnt that the said sandalwood billets were supplied by one Papa Sab and Mohammed Sulthan from the forest near Minniam and that because the lorry had a break-down, Damodhara-the driver of the lorry had parked the said lorry at the said place and had gone to Mysore to bring spare parts for the said lorry. The Range Forest Officer (hereinafter referred to as the "RFO") seized the said lorry and the sandalwood under, a mahazar Ex. B. and produced the said persons, who were present in the said lorry, with a report Ex. A. before the station House Officer, Ramapuram police Station. The lorry and the sandal wood seized were produced before the Divisional Forest Officer as per S. 71-A of the Forest Act.

3. The D.F.O., Kollegal, made a reference to the Regional Transport Officer, Mandya, and came to know that no lorry bearing registration No. MYN 5565 had been registered in the office of the R.T.O. at Mandya. The R.T.O. Mysore, however, informed that the lorry bearing registration number MYM 5421 had been registered with him and that Sri. S.A. Rahim was the registered owner of the said lorry. The D.F.O. thereupon issued show cause notices to the accused concerned in this case, as well as to the registered owner of the said lorry. A notification was also published in the Karnataka Gazette dated 29.12.77 calling for objection to the confiscation of the said lorry as required under the provisions of the Karnataka Forest Act.

4. The registered owner of the lorry bearing No. MYM 5421 contended before the Enquiry Officer that he was the registered owner of the lorry and that the alleged offence had taken place without his knowledge and he prayed for the release of the vehicle.

5. On 22.12.77 M/s. Kothari & Co., filed an application before the Enquiry Officer alleging that they are the real owners of the said lorry as per the Hire Purchase Agreement and they had no knowledge about the sandal wood billets being carried in the said lorry. They produced the hire purchase agreement. He recorded the statements of the registered owner S.A. Rahim and Mohammad Peer Sab, one of the persons found in the lorry at the time of seizure, and passed an order confiscating the lorry in question.

6. The registered owner Rahim being aggrieved by the said order of confiscation approached the District Judge with Misc. Appeal No. 21/78. M/s. Kothari and Co., who claimed to be the legal owners as per the Hire Purchase Agreement were also aggrieved by the said order and approached the District Judge with Misc. Appeal 27 of 78. The District Judge Mysore dismissed both the appeals. Hence, these two revisions.

7. Learned Govt. Pleader Smt. Sona Vakkund raised a preliminary objection that no revision under S. 115 C.P.C. is maintainable against the order in question. According to her, the District Judge who disposed of the appeals, was a persona designata and, therefore, was not subordinate to the High Court and thus both the C.R.Ps. are not

maintainable.

8. On the other hand, the learned counsel Gunjal and Kaleel for the revision petitioners in both the cases, submitted that use of the words "District Judge" in S. 71D indicated that the legislature did not intend the appellate authority to be *persona designata*.

9. Mrs. Sona Vakkund, learned Govt. Pleader, quoted before me *STATE OF MYSORE v. SHANKARANARAYANA*. Kar. L.J. 1975(2), 280. It was a case where the provisions of the Karnataka Public Premises (Eviction of unauthorised Occupants) Act, 1961 came to be interpreted. S. 10 of the said Act stated that an appeal shall lie from every order of the competent officer made in respect of any public premises under Section 5 or S. 7 to an appellate Officer who shall be the District Judge having jurisdiction over the area. In the said case it was held that the use of the words, "an appellate officer" was intended to indicate that the District Judge must act as an appellate officer. Therefore, it is under these circumstances it was held that the District Judge was appointed as *persona designata*. The words used in S. 71D is "District Judge". The wordings, "appellate Officer" or "Judicial Officer" as used in the Public premises Act, 1961 are not to be found in S. 71D of the Forest Act. Therefore, there is lot of difference in the language used in the Public Premises Act and the language used in Karnataka Forest Act. Therefore, the said ruling quoted by Mrs. Vakkund cannot be of much help in this case for resolving the point in dispute.

10. The expression "*persona designata*" is defined by P.G. Osborn in his law Dictionary, 4th Edn., page 253 as:

"a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character".

The said definition was referred to with approval by the Supreme Court in *RAM CHANDRA v. STATE OF U.P.* A.I.R. 1966 S.C. 1888 and in *CENTRAL TALKIES LTD. v. DWARKA PRASAD*, A.I.R. 1961 S.C. 606. The said definition requires that in order to constitute an authority as *persona designata*, the person should be described as an individual. The said definition goes to indicate that if the word is used to describe a person as a member of a class or as filling a particular character, then he cannot be said to be appointed as an authority *persona designata*. If a person is appointed by his name then the appointment would be in his individual capacity, though by accident he may be a District Judge. The use of the words "District Judge" in S. 71D clearly indicates that a person occupying or filling a particular character was constituted as an appellate authority. The Supreme Court has quoted with approval in the said two cases the following statement of Schwabe, CJ, in *PARTHASARATHY NAIDU v. KOTESWARA RAO*, ILR. 47 MAD. 369:

"*Persona Designata*" means persons selected to act in their private capacity and not in their capacity as "Judge".

The Specific use of the words, "District Judge" would clearly indicate that the appellate authority was not appointed in his private capacity but he was appointed as an appellate authority in his capacity as District Judge.

11. Then she quoted before me. K. NANJUNDIAH SETTY & ORS. v. CORPORATION OF THE CITY OF BANGALORE, A.I.R. 1968 Mysore, 38. The question that arose in the said case was whether the words "District Judge" used in S. 412 of the City of Bangalore Municipal Corporation Act, indicated his appointment in person or indicated his appointment as a person occupying the office. His Lordship TukoI held that looking to the context in which the words, "District Judge" were used in S. 412, it could be taken as an appointment *persona designata*. Because in the said Act the Jurisdiction of the civil court was expressly excluded, he held that the use of the words "District Judge" in S. 412 of the Corporation Act was made only to indicate that he was appointed as *persona designata*. Therefore, the facts involved in the said case are different from the facts involved in this case.

12. Mrs. Vakkund then placed before me REVANAPPA v. GUNDE RAO, 1983(1) Kar. L.J. 361. It was a case where S. 110 of the Motor Vehicles Act came to be interpreted. Under the said section, the tribunals are created and the section indicates that the District Judge should be appointed as the Member of the Tribunal. The Tribunal constituted under the Motor Vehicles Act is not subordinate to the High Court for the purposes of S. 115 C.P.C. There is sufficient internal material in the Motor Vehicles Act to indicate that the claims Tribunal constituted under the Act is only a Tribunal and not a court. The Act itself has maintained a distinction between claims Tribunal and a Civil court. Further, the Act provides that if a particular matter comes within the jurisdiction of the claims Tribunal, the jurisdiction of the Civil Court is ousted, vide S. 110(ii)(CCC). Therefore, the said ruling also will not be much help to her in this connection.

13. Sri. Gunjal referred me to S. 6 C of the Essential Commodities Act:

"6C appeal-(1) Any person aggrieved by an order of confiscation under Section 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appeared against."

S. 6-C came up for interpretation before the Supreme Court in THAKUR DAS v. STATE OF M.P. A.I.R. 1978, S.C. 1. The Sessions Judges were appointed by the various State Governments as judicial authority for purposes of S. 6-C of the Essential Commodities Act. The Supreme Court held:

"If the Sessions Judge presiding over the Sessions Court is the judicial authority the question is: would it be an inferior criminal Court subordinate to the High Court for the purposes of sections 435 and 439 of the criminal procedure Code? At the one

end of the spectrum the submission is that the judicial authority appointed under section 6-C would be persona designata and that if by "by a fortuitous circumstance the appointed judicial authority happens to be the Sessions Judge, while entertaining and hearing an appeal under Section 6-C it would not be an inferior criminal Court subordinate to the High Court, and, therefore, no revisional application can be entertained against his order by the High Court. While conferring power on the State Government to appoint appellate form, the parliament clearly manifested its intention as to who should be such appellate authority. The expression "Judicial" qualifying the "authority" clearly indicates that authority alone can be appointed to entertain and hear appeals under section 6-C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged Courts to be the repository of the Judicial power of the State. The appellate authority under Section 6-A(sic) must be a judicial authority. By using the expression "Judicial authority" it was clearly indicated that the appellate authority must be one such-pre-existing authority which was exercising judicial power of the State. If any other authority as persona designata was to be constituted there was no purpose in qualifying the word "authority" by specific adjective "judicial". A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior Courts, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression "judicial authority" the legislative intention is clearly manifested that from amongst several pre-existing authorities exercising judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate function as envisaged by section 6-C. There is one in-built suggestion indicating who could be appointed. The concept of appeal inheres hierarchy and the appellate authority broadly speaking would be higher than the authority against whose order the appeal can be entertained. Here the appellate authority would entertain appeal against the order of the Collector, the highest revenue officer in the district. Sessions Judge is the highest judicial officer in the District and this situation would provide material for determining appellate authority. In this connection the legislative history may throw some light on what the Legislature intended by using the expression "Judicial authority". The Defence of India Rules, 1962, conferred power on certain authorities to seize essential commodities under certain circumstances. Against the seizure an appeal was provided to the State Government whose order was made final. By the amending Act XXV of 1966 Sections 6-A to 6-D were introduced in the Act. This introduced a basic change in one respect namely, that an order of confiscation being penal in character, the person on whom penalty is imposed is given an opportunity of approaching a judicial authority. Earlier appeal from executive officer would lie to another executive forum. The change is appeal to judicial authority. Therefore, the expression clearly envisages a pre-existing judicial authority has to be

appointed appellate authority under Section 6-C. When the provision contained in Section 6-C is examined in the back-ground of another provision made in the order itself, it would become further distinctly clear that pre-existing judicial authority was to be designated as appellate authority under Section 6-C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties: (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under Section 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to introduction of section 6-C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the sessions Judge was appointed a judicial authority it could not be said that he was *persona designata* and was not functioning as a Court.

14. The Supreme Court has further said in paragraph 8 as:

The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code."

It further held:

"Therefore, even if the judicial authority appointed under section 6-C is the Sessions Judge, it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court."

Therefore, in view of the said principle laid down by the Supreme Court, it becomes apparent that though the Legislature has used the words, "the District Judge", it connotes a pre-existing authority i.e. District Judge. Therefore, in view of the said Supreme Court decision, the decisions relied on by Mrs. Vakkund cannot now be considered to be good law at all.

15. Even in S. 3(2) of the Karnataka Village Offices Abolition Act, the words "District Judge" have been used. The said section reads:

"Any person aggrieved by such decision may file an appeal to the District Judge of the District within ninety days of such decision and the decision of the District Judge on such appeal shall be final."

The expression, "District Judge" used in S. 3(2) came up for discussion in W.P. 3269/71 disposed of on 4.8.1976. The said matter was disposed of by a Division Bench of this Court. It held that the use of the words, "District Judge" and the specific use of the words "the decision of the District Judge on such appeal shall be final." Only indicated that the District Judge had been appointed not as a *persona designata* but as a pre-existing judicial authority presiding over the District Court. This view taken by this Court in the said writ petition accords with the decision of the

Supreme Court reported in 1978(1) S.C. 1. S. 6-C of the Essential Commodities Act also came up for interpretation before a Bench of this Court in the case M/s. Vasundara Traders v. State of Karnataka, 1977(1) Kar. L.J. 339. The Bench of this Court held that "Judicial authority" use in S. 6(c) read in the light of the consequent notification appointing the Sessions Judge as "Judicial authority" did not mean that the appointment was persona designata.

16. Even in S. 50(2) of the Rent Control Act it has been laid down that the revision lies to the District Judge. It was held that the use of the words "District Judge" and the use of the words "his decision shall be final" only indicated that the appointment was not persona designata but it was used only to connote a pre-existing authority exercising the powers of the District Judge.

17. S. 71D of the Karnataka Forest Act reads as:

"Any person aggrieved by any order passed under Section 71A or Section 71C may, within 30 days from the date of communication to him of such order, appeal to the District Judge having Jurisdiction over the area in which the property to which the order relates has been seized and the District Judge shall, after giving an opportunity to the appellant to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against."

"(2) An order of the District Judge under sub-sec. (1) shall be final."

18. Though the words "District Judge" are used in S. 71D, it appears to me that the words "District Judge" do not mean persona designata. They mean a person occupying the post of a District Judge presiding over a District Court. Therefore, under these circumstances, the argument of the learned counsel Mrs. Vakkund that the words "District Judge" in S. 71D would connote an authority persona designata, cannot be accepted. Therefore, under these circumstances, a revision under S. 115 C.P.C. is competent and maintainable.

19. The Hire Purchase Agreement and the evidence of one of the partners of the petitioner in CRP 783/80 go to show that the lorry in question is the subject matter of the Hire Purchase Agreement entered into by the registered owner Rahim with the revision petitioner. M/s. Kothari and Company. Therefore, the legal owner would be M/s. Kothari and Company.

20. S. 71B(2) reads as:

"Without prejudice to the provisions of Sub-Sec. (1), no order confiscating any tool, rope chain, boat, vehicle or cattle shall be made under Section 71A if the owner of the tool rope chain, boat, vehicles or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, charcoal, firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, Vehicle or cattle and that each of them had taken all reasonable and necessary precautions against

such use."

The evidence of the partners read along with the Hire Purchase Agreement clearly goes to show that he had no knowledge at all that the sandal wood billets would be carried in the lorry in question or were being carried in the lorry in question. The evidence on record does not show that he even connived at the sandal wood billets being carried in the lorry. This aspect of the matter has not been considered by the D.F.O. at all. Even the appellate authority has not bestowed sufficient attention on this aspect of the matter. Therefore, under these circumstances, the order confiscating the lorry in question cannot be sustained at all.

21. So far as the registered owner-Rahim is concerned, he was not found in the vehicle. It was the driver and the cleaner who were found in the lorry. He had clearly stated in his objection statement that he had no knowledge about the billets being carried in the lorry. Material on record shows that he had not connived at the sandal wood being carried in the lorry. Therefore, under these circumstances, the order of confiscation passed by the D.F.O. and the order passed by the District Judge confirming the said order are set aside. Both the revisions are allowed. I.A. Files does not survive for consideration.

Government Pleader is permitted to file her memo of appearance within 15 days from today in C.R.P. 1216 of 1980.