(1958) 07 KL CK 0028

High Court Of Kerala

Case No: O.P. No''s. 86 and 88 of 1958

United Timber and Cashew Products (Private) Ltd.		APPELLANT
	Vs	
Collector of Malabar and Another		RESPONDENT

Date of Decision: July 7, 1958

Acts Referred:

- Constitution of India, 1950 - Article 114, 226

Citation: (1958) KLJ 1000

Hon'ble Judges: N. Varadaraja Iyegar, J

Bench: Single Bench

Advocate: V.P. Gopalan Nambiar and V.P. Gopi Kumar, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.V. Iyengar, J.
These are two applications under article 226 of the Constitution filed by the same petitioners, the United Timber & Cashew Products (Private) Ltd., Tellicherry. They are directed against two separate orders passed by the common 1st respondent the Collector of Malabar, under the Madras Preservation of Private Forests Act, 1949 and confirmed in single appeal before the common 2nd respondent, the State. The petitioners obtained the right to exploit an area of 1700 acres of forest land in Pakkathu Vellari Malavaram in Pilla Peruvanna Desom, Perambra Amsom, Kurumbranad Taluk under an agreement dated 14-9-1955 with the lessee thereof, viz., Messrs. Associated Timber Mills, Ltd., Tellicherry. By permit dated 14-2-1956 and issued by the 1st respondent, petitioners got permission to cut and remove by selection felling 1479 trees standing in 500 acres of the area within a period of one year. They were unable to cut all the trees within the time limited, and there still

remained 385 trees. So on 6-2-1957 before the period expired, they applied for extension of the period by three more months. However, the 1st respondent rejected the application on 8-3-1957 on the grounds that in the course of their previous operations, unnumbered trees had been felled and besides, the serial numbers had not been adhered to. Petitioners made fresh application to the 1st respondent for reconsideration but without success. Thereafter, on 26-3-1957 they applied for permission to remove the trees which were already cut but had not so far been removed. The 1st respondent rejected this application as well on 5-7-1957 on the sole ground that it was in the nature of a ruse to circumvent the prior order refusing extension. It is this order of the 1st respondent as confirmed by the 2nd respondent that forms the subject matter of O.P. No. 86 of 1958.

2. On 18-12-1956 while still the period under the permit of 14-2-1956 was running petitioners made application for issue of a second permit to cut and remove 2032 trees in another 800 acres of their license area. This application was pending enquiry when the order against extension of the prior permit period was passed. It was subsequently taken up and dismissed by order dated 28-8-1957 on ground of the petitioners'' previous irregularities and further their alleged complicity in illicit felling in other amsom. It is this order of the 1st respondent as confirmed by the 2nd respondent that forms the subject matter of O.P. No. 88 of 1958.

3. According to the petitioners the irregularities relied on by the 1st respondent for passing his order dated 8-3-1957 refusing extension of time for the first permit were very minor and easily explainable and in fact had been explained to the D.F.O. earlier on 20-2-1957. And even otherwise there was provision in the conditions of the permit for condonation and there was no reason on the whole why any extreme view should have been taken in the petitioners'' case. As regards the refusal on 5-7-1957, of permission to remove the trees already cut, the ground alleged as to circumventing prior order had no substance. It was an independent matter which had to be judged on the only footing whether the cutting was within the period of the permit or otherwise. And as it had developed the refusal may cost the petitioners a loss of 85 loads worth about Rs. 15,000. Finally, as regards the refusal on 29-8-1957 of fresh permit, the foisting of the ground as to illicit felling as additional to the so called prior irregularities was totally unjustified, at any rate at that stags when Police investigation was not complete. Petitioners state that the proceedings before the District Collector who was the Authority of first instance in matters under the Madras Preservation of Forests Act, 1949, as above were quasi-judicial in nature and they were entitled accordingly to be heard by the 1st respondent before he passed the respective orders. To the extent therefore, that that opportunity was denied in these cases the orders of the 1st respondent were wanting in natural justice and deserved to be ignored. The order in appeal passed by the State 2nd respondent cannot also stand for the same reason. The prayers were therefore made in the petitions, for primary relief by way of mandamus compelling grant of permission to remove the cut trees in the one case and for

cutting trees in the other in manner the petitioners had originally prayed for, and alternatively for direction to the 1st respondent to hear the petitioners. As in my opinion, the procedural defect complained against viz., as to shutting out a hearing of the petitioners before the 1st respondent passed his respective orders is vital and goes to the root, I proceed to dispose of the petitions in the light thereof. On this question, whatever might have been asserted in the counter affidavits filed on behalf of the respondents, learned Government Pleader is willing to concede that petitioners were not heard as preliminary to the disposal of their petitions. But he says that the proceedings did not, on that account, suffer, because they were merely executive.

4. Now section 3 (2) of the Madras Preservation of Forests Act, in dealing with cutting of trees says:

"No owner of any forest and no person claiming under him, whether by virtue of a contract, license or any other transaction entered into before or after the commencement of the Madras Preservation of Private Forests Act, 1946, or any other person shall, without the previous permission of the District Collector, cut trees or do any act likely to denude the forest or diminish its utility as a forest:

Provided that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual or customary domestic purposes or for making agricultural implements.

Section 4 then provides for appeals to the State Government by any person aggrieved among others, by an order u/s 3(2) and winds up by saying:

The State Government shall pass such orders on the appeals as they may think fit

5. Section 9 provides for bar of suits in the following terms:-

No order of the State Government or the District Collector under this Act and no notification issued by the State Government u/s 6 shall be liable to be questioned in any Court of law.

Section 10, clause (1) provides for the making of rules by the State Government for carrying out the purposes of the Act and clause (2) says:

Without prejudice to the generality of the foregoing power such rules may provide for-

(a) the classes or kinds of trees which may be permitted to be cut and the girth of such trees;

(b) the terms and conditions subject to which permission may be granted;

(c) the procedure to be followed by the District Collector before granting permissions.

The rules so framed deal with these matters in detail, and rule 14 finally says:

If the District Collector has reason to believe that any person to whom permission for felling of trees under the Madras Preservation of Forests Act, 1946, has been granted, has in his application furnished particulars which are materially incorrect or has contravened any provisions of these rules or the conditions under which the permission was granted, the District Collector shall have power to cancel such permission immediately or modify the same subject to such penalty as he may deem fit to impose.

6. It is no doubt true that the District Collector in deciding to grant or refuse permission in one or other matter coming within his purview under the Act is an administrative tribunal and further he is actuated in whole or in part in the matters concerned, by questions of policy, viz., the prevention of denudation of forest or of diminution of its utility as a forest, But this does not necessarily mean that he is not under a duty to act judicially in the course of arriving at his decision. The test is formulated in Halsbury''s Laws of England, Third Edition, Vol. II, p. 56 Art. 114:

Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a lis before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under the duty at any time to act judicially. Even where the body is at some stage of the proceedings leading up to the decision under a duty to act judicially, the supervisory jurisdiction of the Court does not extend to considering the sufficiency of the grounds for, or otherwise challenging the decision itself.

7. Applying the above test to the proceedings herein there can be no doubt that they are in nature quasi-judicial and not merely administrative. For while no question of policy at all is involved in the matter of the removal of timber already cut (O.P. 86) it is only to some extent involved in the issue of the fresh permit (O.P. 88). And besides, in the latter case the grant of the permit hinged upon the fulfilment or otherwise of the conditions prescribed by the Act and rules and not upon a mere subjective determination of the authority. I therefore hold that the 1st respondent was functioning in a quasi-judicial capacity, while dealing with the questions concerned. It is not denied by learned Government Pleader that in such case, the principle of natural justice required that the petitioners should be heard before orders were passed against them. It is not also denied and rightly that the want of a hearing before the 1st respondent was in any way made good by hearing of counsel before the 2nd respondent State. If so, the orders now passed against the petitioners cannot stand. That is to say, the alternative relief prayed for by the petitioners viz., grant of opportunity to be heard before orders are passed,

appropriately follows. I therefore quash the orders of the 1st and 2nd respondents forming the subject matter of the original petitions herein and direct the 1st respondent to take the petitions dated 26-3-1957 and 18-12-1956 respectively back on his file and dispose of them, after giving an opportunity to the petitioners to be heard. The petitions are allowed to the above extent. In the circumstances there will be no order as to costs in both the petitions.