H.C.L. Agro Power Limited Vedadri Village, Jaggaiahpet Mandal, Krishna District Vs A.P. State Water, Land and Trees Authority and Others

Writ Petition No. 8827 of 2003

Court: Andhra Pradesh High Court

Date of Decision: Sept. 6, 2012

Acts Referred:
Andhra Pradesh Water Land and Trees Act, 2002 â€" Section 2, 28, 28(2), 28(5), 29

Citation: (2013) 1 ALT 370 : (2013) 3 EFLT 351

Hon'ble Judges: Pinaki Chandra Ghose, J

Bench: Single Bench

Advocate: M. Sudheer Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

Hon''ble The Acting Chief Justice Sri Pinaki Chandra Ghose

1. This Writ Petition has been filed by HCL Agro Power Limited, Vadadari, Krishna District, a company incorporated under the Companies Act,

to issue a writ of mandamus declaring the action of the respondents in seizing the fire wood under transport to the petitioner company in the guise

of contravention of A.P. Water, Land Trees Act, 2002 and the Rules made thereunder as illegal, void and without jurisdiction and to declare

Respondent No. 4 as not notified or specified to be the Designated Officer under the Act and for a direction to Respondent No. 5 to refrain from

in any way proceeding against the petitioner-company in the transportation of specified exempted species of fire wood to the premises of the

petitioner''s factory. The petitioner company was established for generating electrical energy of the capacity of 6 MW by employing a process

consisting of bio mass material such as waste wood, Julie flora, agricultural waste such as paddy husk, corn stems etc. Waste wood includes

Neem, Tumma etc Under the A.P. Forest Produce Transit Rules, 1970 Neem, Tumma including kancha (fencing) tumma are notified to be the

exempted species and the felled produce of such exempted species can be transported without any transit permit under the said Rules and for

transportation of all other categories of wood other than the exempted categories permission is required to be obtained from the forest authorities.

The petitioner-company is procuring fire wood for the purpose of the company by purchasing the exempted species of trees which were cut or

felled from various districts where such species are notified as exempted under the Rules. Since there is no prohibition for transportation of such

exempted categories of wood, the petitioner is procuring such wood from the concerned for generating the electrical energy after obtaining permits

from the forest authorities though under the A.P. Forest Produce Transit Rules, 1970 it is not obligatory to obtain permission. The grievance of the

petitioner is that under the guise of a prohibition under A.P. Water, Land Trees Act, 2002 (hereinafter referred to as "the Trees Act") Respondent

No. 4 - Mandal Revenue Officer (Designated Officer), Jaggaiahpet Mandal is seizing vehicles transporting such exempted fire wood to the

petitioner factory on the ground that such material was procured by felling the trees without obtaining any prior permission from the Designated

Officer. Respondent No. 4 has seized number of vehicles transporting the fire wood to the petitioner factory and compounded the offence under

coercion and collected thousands of rupees with reference to the quantity of the fire wood under transport under the provisions of Trees Act.

According to the petitioner, Respondent No. 5 - Divisional Forest Officer, Vijayawada is insisting that the power projects were required to obtain

felling permission even for using the exempted category fire wood in view of Section 28(5) of the Trees Act. According to the petitioner, there is

no prohibition under the provisions of the Trees Act for cutting or felling any tree which is an exempted species, therefore, imposition of penalty

under the provisions of the Trees Act is without jurisdiction and cannot be sustained.

2. In the counter filed by the respondents it is stated that Jaggaiahpeta Mandal where the petitioner company is located is facing air pollution due to

the left over material of cement factories and the establishment of the petitioner factory has further increased the pollution level since the petitioner

company is encouraging cutting of live trees such as Neem, Thumma etc. for utilizing them as raw material instead of utilizing the bio-mass material

such as waste wood, julieflora, agricultural waste. The petitioner company is encouraging the poor labour, small and marginal farmers to cut the

living trees in the fields as well as in the private houses to produce the same to their factory for generating power. Under the provisions of the Trees

Act, the Government has designated the Mandal Revenue Officer as Ex-Officio Chairman and other Mandal Level Officers as members of the

Mandal Authorities. It is the duty of the Mandal Revenue Officer to protect the living trees and also to get tree plantation wherever trees fell due to

various reasons. The Mandal Revenue Officer is empowered to compound the offences u/s 37 of the Trees Act and also has the power to seize

the property u/s 38. It is further stated that tractors/lorries which are carrying cut trees of neem, tumma etc of the age of 5 to 10 years are only

seized and offences are compounded so as to prevent the ryots/farmers/labourers from cutting the living trees. It is specifically averred that apart

from the bio-mass material the petitioner company is in the habit of taking delivery of cut trees of neem and other trees of 5 to 10 years which

attracts the provisions of the Trees Act. The Mandal Revenue Officer as Designated Authority under the Act has performed his legitimate duties in

the interest of public. According to the respondents, even for the usage of felling of trees or branches, permission of the designated officer is

required u/s 28(5) of the Act. The designated officer has acted in accordance with the provisions of the Trees Act to safeguard public interest and

to maintain pollution free area.

3. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. Learned counsel for the petitioner submitted that u/s (2) of Section 28 of the Trees Act, the Authority under the Act is empowered to direct the

Municipal Corporation or Municipality or the other Local Authorities, as the case may be, to designate an officer to be incharge of tree plantations

in their respective areas, whereas sub-section (2) of Section 2 defines ""Designated Officer"" to mean an officer or any person so designated by the

Authority to perform the functions under the Act. Though there is inconsistency in the two provisions since the charging section has overriding

effect over the definition clause, the Designated Officer is to be designated by the local authority under the directions of the 1st respondent

Authority. Since the 4th respondent has not been appointed under the directions of the Andhra Pradesh State Water, Land and Trees Authority

constituted u/s 3 of the Act, 4th respondent has no jurisdiction to impose the penalties under the provisions of the Trees Act nor has the authority

to seize the wood or the vehicles. It is further contended that since Neem, Tumma and other trees are exempted species under the A.P. Forest

Produce Transit Rules, 1970 and since there is no prohibition under the Trees Act to cut such trees, the Trees Act has no application insofar as

those exempted species of trees are concerned and no permission for felling of trees or branches is required to be obtained.

5. The learned counsel for the respondents submitted that Mandal Revenue Officer was designated as the Designated Authroity under the

provisions of the Trees Act by the Government itself and as such the Mandal Revenue Officer has jurisdiction and authority to discharge the

functions under the provisions of the Trees Act. He further submitted that though Neem, Tumma etc. are exempted species, the provisions of the

Trees Act have application notwithstanding the A.P. Forest Produce Transit Rules, 1970 and, therefore, permission is required to be obtained for

cutting and transportation of the wood related to such species also and prayed for dismissal of the writ petition.

6. Before we consider contentions urged on behalf of the petitioner, we may briefly refer to the provisions of the Andhra Pradesh Water, Land and

Trees Act, 2002 (Act No. 10 of 2002). The main object behind the enactment is to promote Water Conservation and Tree Cover and Regulate

the Exploitation and use of Ground and Surface Water for Protection and Conservation of Water Sources, Land and Environment and matters

connected with or incidental thereto. Sub-section (1) of Section 2 defines ""Authority"" to mean the Andhra Pradesh State Water, Land and Trees

Authority constituted u/s 3 and sub-section (2) of Section 2 defines ""Designated Officer"" to mean an officer or any person so designated by the

Authority to perform the functions under the Act. Chapter 2 deals with constitution of the Authority. For the purpose of this writ petition, we are

not concerned with the constitution of the ''Authority''. Chapter V consisting of Sections 28 to 32 deals with Trees. Sub-section (1) of Section 28

provides that the Authority may direct that every Municipal Corporation or Municipality or any other Local Authority, as the case may be, to insist

for compulsory plantation with such number of trees and their maintenance as may be prescribed while according approval of building plans. Sub-

section (2) and (5) which are relevant for our purpose reads as under:

(2) The Authority may also direct the Municipal Corporation or Municipality or the other Local Authorities, as the case may be, to designate an

officer to be in charge of tree plantations in their respective areas.

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(5) No felling of the trees or branches is permitted without the prior permission of the designated officer. In case when a tree is to be felled, not

less than two seedlings should be planted and when such planting is not possible, cost of raising seedlings and their maintenance shall be recovered

from the concerned individual, organization or other persons for raising plantations in public places.

Sub-section (1) of Section 29 of the Trees Act provides that any person, institution, organization or department, public or private, providing a

public or private utility service including Roads and Buildings Department, Energy Department of the Government and Telecommunications

Department shall ensure protection of trees and their branches while developing their infrastructure or carrying on their activities. Section 30 deals

with Tree plantations by Government departments etc. Sub-section (3) of Section 30 which is relevant may be extracted below:

(3) All agricultural land owners except small and marginal farmers and wetland owners as determined by the Government shall plant trees in their

land holding as prescribed by the Authority upto 5% of their total land holding and felling permission for trees shall be given only when the land

owner plants trees in equal extent of land.

Provided that the area covered by the existing tree growth including fruit bearing horticultural crops shall be included while calculating the area

under tree growth.

Provided further that suitable incentives, as may be prescribed, shall be given to the land owner who plants tree species in his total land holding.

Section 35 provides for penalties. Sub-section (1) of Section 35 provides that whoever contravenes any of the provisions of the Act or obstructs

any person in the discharge of his duties under the Act or contravenes any order or violates any rule made under the Act shall be punished with fine

which shall not be less than one thousand rupees but which may extend five thousand rupees. Sub-section (3) of Section 35 provides that whoever

without any lawful authority fells a tree shall be punished with a fine which shall not be less than two times of the value of such trees but which may

extend to five times of value of such tree. Section 37 which deals with compounding of offences to the extent relevant reads as under:

37. (1) Notwithstanding anything contained in the in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Authority or the

Designated Officer any Officer authorized by the Government in this regard, as the case may be, may accept from any person who committed or

who is reasonably suspected of having committed an offence punishable under the Act other than the offences punishable under sub-section (2) of

Section 35 of this Act, -

(i) a sum of money as may be prescribed, by way of compounding of the offence.

(ii) The Authority or Designated Officer or any other officer authorized by the Government in this regard, as the case may be, may reject to

compound the offence for the reasons recorded in writing;

(ii) The Authority or Designated Officer or any officer authorized by the Government in this regard, as the case may be, shall pass order to

compound the offence or otherwise within a period as may be prescribed.

Section 39 of the Act provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law

for the time being in force.

7. No doubt under sub-section (2) of Section 28 of the Trees Act, the Authority constituted u/s 3 of the Act is empowered to direct the Local

Authorities to designate an officer to be in charge of tree plantations in their respective areas whereas under sub-section (2) of Section 2 defines

Designated Officer"" to mean any officer or any person so designated by the Authority to perform the functions under the Act. Notwithstanding the

definition clause, under the charging section 28(2), the State Authority has power to direct a local authority to designate an officer to be in charge

of the plantations. But, under Rule 9(1) of the Andhra Pradesh Water, Land and Trees Rules, 2002 the Government may by notification constitute

a Mandal Authority which consists of (a) Mandal Revenue Officer of the concerned Mandal as Ex Officio Chairman, Mandal Development Officer

Ex-Officio Vice Chairman, Sarpanch of the Mandal Headquarter as Ex-officio member etc. and the Government by notification issued in

G.O.Ms.No. 244, Panchayat Raj and Rural Development (RD.IV) dated 24.6.2002 constituted Authority for each Mandal in the State. Under

sub-rule (3) of Rule 9 the Mandal Authority shall conduct meetings and perform such functions as delegated u/s 6 of and Section 3(6) of the Act

by the Authority and other functions as directed by the Government. The Mandal Authority is empowered to perform such functions as delegated

u/s 6 of the Act. Therefore, notwithstanding that a designated Officer is appointed by a local authority, the Mandal Authority which is constituted

by a notification of the Government in accordance with the Rules framed under the Act, is empowered to discharge the functions under the Act

insofar as the Mandal is concerned. The Mandal Revenue Officer who is the designated authority, therefore, has jurisdiction to impose the

penalties under the provisions of the Act and has power to seize the property or the vehicles which are transporting the wood without obtaining

permission. It is not the case of the petitioner that any other Officer has been designated as the ""Designated Officer"" and such officer has failed to

discharge the functions. Further, sub-section (1) of Section 37 of the Trees Act clearly provide that the Authority or the Designated Officer or any

Officer authorized by the Government is permitted to accept the money as may be prescribed by way of compounding of the offence or reject to

compound the offence for the reasons recorded in writing. Therefore, the Mandal Revenue Officer who is an Officer appointed by the Government

by notification has certainly jurisdiction to deal with the penalties. The designated authority is not only concerned with tree plantation but also

empowered to perform the functions under the provisions of the Act. The contention of the petitioner that the Mandal Revneue Officer has no

jurisdiction to perform the functions under the Act, therefore, has no merit.

8. Admittedly, the power plant of the petitioner company has to generate electrical energy primarily employing a process consisting of bio-mass

material such as waste wood, Julie flora, agricultural waste such as paddy husk, ground net husk etc. But the petitioner company under the guise

that certain trees like neem, tumma etc. are exempted species under the A.P. Forest Produce Transit Rules, 1970 and there is no prohibition to cut

such trees, is procuring such wood from the ryots and labourers from various districts and utilizing the same for the purpose of generation of

power. The contention of the petitioner that no permission is required to procure such exempted categories of wood from the ryots or labourers

has no merit. The Trees Act is enacted mainly to promote Water Conservation and Tree Cover and regulate the exploitation and use of ground

and surface water and for protection of water sources, land and environment to maintain a pollution free area in the interest of public. Section 39 of

the Act clearly provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in any other law for the

time being in force. Therefore, the Trees Act has overriding effect over the A.P. Forest Produce Transit Rules, 1970. As such, even though Neem,

Tumma and other species are exempted under the A.P. Forest Produce Transit Rules, 1970, petitioner-company or any other individual connected

with the cutting of such trees is under an obligation to obtain permission from the authority empowered under the Trees Act to grant such

permissions before cutting the trees. The main object of the Trees Act being to protect the environment in the area, if illegal cutting of trees without

obtaining prior permission is allowed, the level of pollution in the area may increase affecting the public interest at large. In the counter-affidavit, the

respondents have taken the stand that the petitioner company is encouraging cutting of live trees by the poor labour, small and marginal farmers for

utilizing the same as raw material instead of utilizing the bio-mass material such as waste wood, agriculture waste and that the seized lorries contain

trees of neem, tumma of the age of 5 to 10 years. Sub-section (5) of Section 28 clearly provides that no felling of the trees or branches is

permitted without prior permission of the designated officer. Sub-section (3) of Section 30 provides that permission for felling of trees shall be

given only when the land owner plants trees in equal extent of land. The Legislature, therefore, has designedly framed the law so as to prevent any

illicit or illegal felling of+ trees affecting the environment. Indiscriminate felling of trees would badly affect the bio-sphere and the environment in the

area. Under the guise that certain species of wood are exempted under the A.P. Forest Produced Transit Rules, the petitioner or any other

individual cannot be permitted to encourage cutting of such trees without obtaining permission from the designated authority under the provisions of

the Act. It is obligatory under the provisions of the Act to obtain prior permission from the concerned authority to cut or fell any kind of tree in the

area and the Trees Act has not exempted any category of tree from the provisions of the Act. As Ex-officio Chairman of the Mandal Authority, it

is the duty of the Mandal Revenue Officer to protect the living trees and also get tree plantation wherever trees fell due to various reasons.

9. It is also pointed out before me that under the A.P. Water, Land and Trees Act, 2002, it has been specifically stated in Rule 10 that the District

Authority may utilize the services of Designated Officers and technical Officers in discharging of its functions. I have also found from Rule 8

wherein it has been specifically mentioned as to who can be treated as a Designated Officer under the said Rule since the District Authority has

been prescribed in the said Rule. Accordingly, in my opinion, the Designated Authority is the Mandal Revenue Officer and in fact he has a right to

take steps in the matter and I find that the Designated Authority has acted in accordance with the provisions of the Trees Act, 2002 to safeguard

the public interest and petitioner is not entitled for the relief prayed for. For the reasons aforesaid, we find no merit in the Writ Petition and it is

accordingly dismissed. There shall be no order as to costs.