(2001) 08 AP CK 0008

Andhra Pradesh High Court

Case No: Writ Petition No''s. 12290 of 1999 and Batch

Shaik Hussain		APPELLANT
	Vs	
Divisional Forest Officer, Proddatur, Cuddapah District and others		RESPONDENT

Date of Decision: Aug. 10, 2001

Acts Referred:

- Andhra Pradesh Forest Act, 1967 - Section 2, 29, 29(2), 68, 68(1)
- Andhra Pradesh Saw Mills (Regulation) Rules, 1969 - Rule 3, 3(1), 3(3), 5(2), 7
- Constitution of India, 1950 - Article 14, 19(1), 301
- Forest Act, 1927 - Section 41, 41(1), 41(2), 42, 76
- General Clauses Act, 1897 - Section 11

Citation: AIR 2002 AP 1 : (2001) 5 ALD 650 : (2001) 5 ALT 187 : (2001) 2 APLJ 335

Hon'ble Judges: Satya Brata Sinha, C.J; V.V.S. Rao, J; Bilal Nazki, J

Bench: Full Bench

Advocate: M/s P. Veera Reddy, Government Pleader for Forest, A. Satya Prasad, R. Satyanarayana Reddy and P. Sriraghuram, for the Appellant;

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.
In this batch of cases, the vires of Rule 3(3), 5(2), 7(1) and (2) of the Andhra Pradesh Saw Mills (Regulation) Rules, 1969 (hereinafter referred to as "the Rules") as amended by G.O. Ms. No. 99 and G.O. Ms. No. 100, Environment, Forest, Science and Technology (For. III) Department, dated 17-7-1998 is in question.

2. For the sake of convenience, the fact of the matter may be noticed from the first case i.e., Writ Petition No. 12290 of 1999.

3. The petitioner for the purpose of establishing a Saw-mill in Proddutur Town, Cuddapah District took on lease land to the extent of 579 sq. mts in S.No. from one Sri B.S. Ameer on 31-12-1997. Pursuant to the recommendation of the Director of Town and Country Planning, by reason of Memo dated 19-1-1999, State Government granted relaxation of the Master Plan Zoning Regulation as also relaxation of the change of the land use from residential to industrial in favour of the petitioner on certain conditions which were complied with by the petitioner. He had also obtained No Objection Certificate from the Mandal Revenue Officer and also requisite permission from the Factories Department for establishing the saw-mill. Thereafter, he submitted an application to the 1st respondent for issuance of a licence under the relevant rules for establishing a saw-mill in the name and style of "Everest Saw-Mill". On the application of the petitioner, the 1st respondent called for remarks from the Forest Range Officer who recommended the case of the petitioner, however, with an endorsement that the saw-mill sought to be established is situated within 5 kms., from the reserve forest as per the amended rules issued in G.O. Ms. No. 99 EFS&T Department dated 17-7-1998. Basing on the report of the Forest Range Officer, the 1st respondent by proceedings dated 21-11-1998 rejected the application of the petitioner on the ground that no fresh saw-mill could be permitted to be established within the prohibited distance. The 2nd respondent on 24-5-1999 also rejected the appeal preferred there against.

4. Rule 3 of the said rules as amended through the said G.O. is in the following terms:

Rule 3(1) No person shall install, erect or operate a saw-mill for cutting, converting or sawing of timber without obtaining licence for such installation from the licensing authority.

(2) No licence for setting up fresh saw mills within a distance of five kilometers from the boundary of any forest under the control of the Forest Department whether notified or not shall be granted, except when it is required for departmental use.

(3) The distance of five kilometers shall be computed from topo sheets as aerial distance as crow files.

5. Rule 7 of the rules which was also amended reads thus:

1. Registers as given in Form III (A) and (B) of these rules shall be maintained by every licence holder for accounting fully and properly the timber received excluding the exempted species under transit rules in the saw-mill for conversion, and its disposal. The registers should be made available at any time to all inspecting officers along with permits/ invoices in original, within the sawmill premises.

2. A yearly abstract of receipts of disposal with the balance of unconverted stock on hand shall be submitted before the tenth of the January next to the Divisional Forest Officer concerned failing which the licensee shall be liable to pay a sum of Rs. 500/-

for every moth of default. Variation of 5% in round timber in figures in between the register and ground stock in measurements is permissible and variation in excess of the above should be explained.

3. The licensee shall not operate the saw mill or any machinery within the saw mill premises during the period of 22-0 hrs., to 0600 hrs. of next day, except in Municipal Corporation/ Municipality areas. However, in special circumstances, the Divisional Forest Officer concerned on application made to him may consider relaxation of the above timing for a period to be specified by him.

4. All the timber, sawn sizes and wood waste shall be properly stacked in the saw-mill premises.

5. Timber for sawing and conversion shall be accepted unless:

(a) it bears property marks; and

(b) it is covered by a transit permit, and for this purpose all timber lying within and adjacent to sawmill premises upto a distance of five meters shall be taken into consideration:

Provided that the licence holder shall immediately report to the nearest Forest Officer, the timber without property marks, and the timber not claimed by others.

6. When timber is brought for conversion to saw-mill premises, the licence holder should retain the original and issue ''Form II permit'' or ''Form IV under Andhra Pradesh Forest Produce Transit Rules, 1970 as the case may be to the timber owner along with a photo copy of original permit.

6. The learned Counsel appearing for the petitioners contend that the aerial distance of five kilo meters provided for under Rule 3(3) is wholly irrational and as, such measurement cannot be made, the same must be held to be unscientific.

7. It was urged that having regard to the specific and general rule making power contained in Section 29(2)(h) and Section 68 of the A.P. Forest Act, it must be held that as the specific provision cannot have any application, such a power to make the rule in relation to a saw-mill, does not exist in terms of Section 68.

8. Strong reliance has been placed on a decision of Division Bench of this Court by the learned Counsel in Government of A.P. v. Sree Sharada Timber Depot. 1996 (3) ALD 237.

9. It is also contended that the maintenance of registers as contemplated under Forms III-A and B is wholly impracticable inasmuch as no timber can separately be shown before conversion and after conversion as it is possible to sell only a part of the log and the same depends upon the demand of the customer and in that view of that matter, no accounts as prescribed in Form III-A and B can be maintained. Although the Andhra Pradesh Forest Act and the rules framed thereunder are

regulatory in nature, but having regard to the practical difficulties which are faced by the saw-mill owners, the same must be held to be unreasonable.

10. It is next contended that the bar in the transfer of the saw-mill as contained in Rule 5(2) would not apply to a case where the licence is inherited by wife or son of the deceased licensee and unless so construed, the licence which had been granted, the heirs of the deceased licensee cannot carry on the business on the basis of the existing licence inasmuch, as if they are to apply for a fresh licence, no such licence would be granted having regard to Rule 3(3). The Andhra Pradesh Forest Act, 1967 was enacted to consolidate and amend the law relating to the protection and management of forests in the State of Andhra Pradesh.

11. "Forest produce has been defined u/s 2 (g) to mean;

''Forest produce'' includes-

(1) The following whether found in, or brought from a forest or not, that is to say timber, bamboos, charcoal, rubber, cacutchour, catechu, wood-oil, resin, natural varnish bark, lac, mahua flowers, mahua seeds, myrobalans, tumki leaves, rousa grass, rauwolfia serpentina, adda leaves;

(2) The following when found, in or brought from a forest that is to say-

(i) tress, such leaves, flowers and fruits as may be prescribed and all other parts or produce not herein before mentioned of trees;

(ii) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;

(iii) wild animals, wild birds, skins, tusks, horns, bones, silk cocoons, honey, wax and all other parts or produce or animals and birds;

(iv) peat, surface soil, rock and minerals (including lime stone and laterite) mineral oil and all products of mines or quarries; and

(3) Such other produce as may be prescribed.

12. Chapter IV of the said Act provides for control of transit possession of timber and other forest produce. Section 29 empowers the Government to make rules to regulate the matters contained in subsection (1) thereof and in particular and without prejudice to the generality of the foregoing power, such rules may

(h) prohibit absolutely or subject to the conditions in the entire State of Andhra Pradesh or within such local limits as may be specified, the establishment of pits or machinery for sawing, converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, of the possession or carrying of hammers or other implements used for marking timber.

13. Section 68(1) empowers the Government to make rules to carry out all or any of the purposes of the Act.

14. The legislative competence of the State to make rules to regulate the operation of the saw-mills is not in dispute.

15. Before proceeding to deal with the matter, we may notice that in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , the Apex Court laid great stress upon the provisions of Forest Conservation Act, 1980 and directed:

All unlicensed saw-mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw-mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.

16. We although are not concerned with the provisions of the Forest (Conservation) Act, 1980 in this case, the matter has to be considered having regard to the fact that the State has a duty to see that the forest produce be properly accounted for so as to check illegal felling of trees and sale of the timber in clandestine manner. The strict vigil on the part of the State in maintaining the forestry of the State need not be over-emphasised.

17. The question as to whether such rules framed in terms of Sections 41, 42, and 76(d) of the Forest Act, 1927 are legal and valid, camp up for consideration before the Apex Court in State of Bihar and others Vs. Ranchi Timber Traders Association, etc. etc., . It was noticed therein:

The variety of subject provided in the sub-heads of sub-section (2) of Section 41 are precluded with the expression "in particular and without prejudice to the generality of the foregoing power". Wholesome power stands conferred on the State Government to make rules under sub-section (1) of Section 41 with regard to transit of timber and other forest produce by land or water. Conferral in such powers in it the power to frame rules in order to regulate place for stoppage, reporting, examination and marking of timber or other forest produce. Necessarily, duty, fee royalty or charges due thereon become due, if imposed. In order to avoid breach of the rules, Section 42 Gets into line. Then comprehensive power on the subject is given generally to the State Government as additional powers to make rules to carry out the provision of the Act. No one can be permitted to deny that regulating the activity of keeping a saw-pit or a depot is not an activity to which the provisions of the Indian Forest Act, 1927 would not be attracted. Thus, requiring all the saw-pit holders or depot holders to obtain regulatory licences squarely fall within clause (d) of Section 76, if not, (without holding so) under the power to regulate transit by land or air available u/s 41 of the Act. These three provisions namely Sections 41, 42 and

76 reflect an integrated scheme to carry out the provisions of the Act and as the preamble of the Act is suggestive to consolidate the laws relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. The power to regulate by licence the upkeep of saw-pits and depots is in any event ancillary to the main power.

18. Sections 29 and 68 of the A.P. Forest Act are in pari materia with Sections 41, 42, and 76 of the Forest Act, 1927 and have been enacted to achieve the same object.

19. Yet again, in Sushila Saw Mill Vs. State of Orissa and others, , the Apex Court was considering the provisions of Orissa Saw Mills and Saw Pits (Control) Act (27 of 1991). The question as to whether the State Act could impose a restriction/prohibition was answered thus:

There can be no doubt, therefore, that they intended the word "restriction" to include cases of prohibition also in certain rare cases. The contention that a law prohibiting the exercise of a fundamental right is in no case saved cannot, therefore, be accepted. It is seen that the reserved forest is being denuded or depleted by illicit felling. Thereby denudation of the reserved forest was noticed by the Legislature. The preservation of the forest is a matter of great public interest and one of the rare cases that demanded the total ban by the Legislature. The Act came to be enacted to impose a total ban in prohibited area for the period during which the ban is in operation, to carry on saw-mills business or sawing operation within the prohibited area. It is, therefore, clear that the statute intends to impose a total ban which is found to be in "public interest". The individual interest, therefore must yield place to the public interest. Accordingly, it is neither arbitrary nor unreasonable. The Full Bench of the High Court upheld the provision as valid and in this case it has rightly declared the law. It is true that by geographical contiguity, Keonjhar District appears to have been situated within the prohibited area but that is the legislative mandate that the entire area covered within the prohibited zone is teated as a class as against the other area. Therefore, when the limits of that district area within prohibited zone of the reserved or protected or forest area etc., or within 10 k.ms., it is a legislative scheme to give effect to the legislative object in the public interest to preserve forest wealth and environment and to put an end to illicit felling of forest growth. Therefore, it is a class legislation; it is not discriminatory and does not offend Article 14 or Article 301 of the Constitution. It is a valid law.

20. Yet again, in Madanlal Sethi and others Vs. State of M.P. and others, , it was observed as regards the validity of the provisions making saw-mill owners to purchase from Government depots, as under:

We have perused the relevant forms submitted by the parties. After perusing the same, we are satisfied that the details, as have been provided for, are required only with the object of ensuring that the licensee who are the persons in the control of the saw-mill and saw-pit or employee etc., are in lawful possession of the wood and

of further ensuring that the wood in their possession was obtained from a lawful source and they have duly accounted for such a wood. Otherwise, unaccounted wood would be presumed to have been obtained from unlawful source and thereby they are liable to account for, and on failure to account for the same, they should face the consequences ensuring thereunder, viz., confiscation, cancellation of licence or prosecution. It is also seen that an Expert Committee came to be constituted to lay down modalities for identification of the logs and wood purchased from the auction depots in the forest area etc. It is true that these are the administrative instructions and they do not have the flavour of statutory rules.

21. As regards the relevance of the requirement to maintain meticulous details, it was held:

The transit permit issued to the purchaser does contain the same details with the number of the truck carrying the wood. The meticulous details are required to be mentioned in the required forms. Thus, at the time of entrustment of the logs purchased by the auction purchaser, details are given to him before the transit of the wood with the transit permit issued by the competent officer. When the logs reach the destination, namely, saw-mill or saw-pit, the necessary entries, of the forest wood are required to be made in Form D1, of finished goods in Forms D2 and monthly returns in Form D3. Thus, rules are consistent with the meticulous details and there is no gap. The rules cannot be declared ultra vires the Constitution as offending Article 19(1)(g) of Article 14 simple because some shortfall or discrepancy is noticed by the officer in the quantity or quality of the wood. Equally, when officers take action for the violation of the statutory provisions, an individual case is required to be considered on the fact-situation. The Act and rules cannot be declared ultra vires on account thereof.

22. The provisions of the A.P. Forest Act thus in our opinion confer a wide power upon the Slate to make rules as a result whereof, regulatory measures can be taken as regards operation of saw-mills including making provisions for granting of licence etc.

23. The decision of the Division Bench of this Court in Sharada Timber Depot (supra), with great respect to the learned Judges, cannot be accepted as laying down the correct proposition of taw. In the said decision, the Division Bench, in our opinion, posed a wrong question to itself and has proceeded on the basis as to whether a specific provision shall prevail over the general rules. It further erred in proceeding that no rule is required to be framed u/s 29 at all. There cannot be any legal justification for coming to the conclusion that the rule making power cannot be read conjointly. There exists an apparent fallacy in the said decision. In the event it is held that Section 29 (2) (h) was not applicable, Section 68 would be and thus, such rules can be framed even under the general power conferred upon the State u/s 68(1). Section 29 (2)(h) in our view, provides for framing guidelines as regards the subject which should be brought within the rule making power of the State so as to enable it

to carry out all or any of the purposes of the Act. We are therefore of the opinion that the decision in Sharada Timber Depot (supra) does not lay down the correct law and it is overruled accordingly.

24. In M. Venkateswara Rao v. Government of A.P. 1997 (3) ALD 685, a Division Bench of this Court, while purporting to hold that broader and literal interpretation should be given to the impugned rule which would operate fairly and in a reasonable manner, suitable directions can be given by reading down the provisions of the Act without striking down the rule itself. Issuance of such directions in the name of interpretation of rules is beyond the domain of this Court. Having regard to the authoritative pronouncements of the Supreme Court referred to above, we have no hesitation in arriving at the conclusion that the said rules are within the rule making power of the State and thus are valid. The said decision also necessarily has to be overruled.

25. The submission to the effect that the amendment in Rule 3(3) of the rules whereby and whereunder the aerial distance has been provided is ultra vires the Act, again cannot be accepted.

26. Section 11 of the General Clauses Act, 1897 provides for measurement of distance which reads:

Measurement of distances :--In the measurement of distances for the purposes of any Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal place.

27. In the absence of any provisions contained in the A.P. General Clauses Act, 1981 the said provision shall apply.

28. Topo sheet is a sheet of topography. It is thus always possible to draw a straight line from the boundary of the forest to the place where the saw-mill is said to be established wherefor an application for licence has been filed. A forest may not be in the shape of a circle and thus, it may always be necessary to find out the distance by taking the aerial distance on the basis of topo sheet. In fact such a provision leads to equality. Further what the impugned Rule 3(3) provides is that while computing 5 KMs distance for the purpose of Rule 3(2), one has to go by topo-sheets and not physical verification of distance which is always difficult and not feasible. Further to our mind, the rule tends to reduce arbitrariness and is more helpful to prospective licensees. It would also avoid delay in processing the applications.

29. We may also notice here that supposed hardship which may be caused to the petitioners cannot be a ground to attract the provisions of Article 14 and for striking down the law. In Devi Prasad and ors Vs. Government of Andhra Pradesh and ors, , it has been held:

In the present case, there may be truth in the case of the appellants that they are hit hard because of the new rule. Dr. Chitale tried to convince us of the hardship that his clients sustain consequent on this rule and weightage conferred thereby. But mere hardship without anything arbitrary in the rule does not call for judicial intervention, especially when it flows out of a policy which is not basically illegal.

30. As noticed by the Apex Court in Madanlal Seth (supra), stringent measures are required to be taken for the purpose of maintenance of books of accounts and the saw-mill owners can be directed to maintain books of accounts for the purpose of prohibiting illegal felling of trees and disposal of timber.

31. It is one thing to say that it is not at all possible to maintain such books of accounts, but it is another thing to say that they are difficult to be maintained. The practical problems in the absence of any valid or cogent reasons cannot be a ground to invalidate a rule. It will bear repetition to state that the licensee has to maintain the books of accounts. We are therefore of the opinion that regulations cannot be said to be unreasonable,

32. The licence granted in favour of a licensee cannot be a heritable right unless such provision exists in the statute. By reason of the grant of licence, rights and obligations are created exclusively on the person in whose favour licence has been granted. Therefore, such rights and obligations are purely personal in nature. Thus in the absence of any statute, providing for transfer of such rights and obligations on to the heirs of the deceased licensee, they cannot claim any right to continue in the business.

33. In that view of the matter, we cannot interpret Rule 5(2) in a manner as has been suggested by the learned Counsel so as to include the cases of inheritance. If no such right exists, the heirs of the deceased will have to file an application for grant of fresh licences and in the event Rule 3(3) comes in their way, in the name of interpretation of the statute, the Court issue a direction which will be in contravention of the statute.

34. For the reasons aforementioned, we do not find any, merit in these applications. The writ petitions are dismissed. No costs.