

(1997) 02 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No's. 5744 and 9886 of 1993

S. Rajamouli and Others

APPELLANT

Vs

Special Secretary to
Government, Energy, Forest,
Environment Science and
Technology and Another

RESPONDENT

Date of Decision: Feb. 24, 1997

Acts Referred:

- Andhra Pradesh Charcoal (Production and Transport) Rules, 1992 - Rule 5, 6, 7, 8
- Andhra Pradesh Forest Act, 1967 - Section 68

Citation: (1997) 3 ALD 369 : (1997) 3 ALT 215 : (1997) 2 APLJ 1

Hon'ble Judges: P. Venkatarama Reddi, J; K.B. Siddappa, J

Bench: Division Bench

Advocate: C. Nageswara Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, J.

The petitioners are doing business in charcoal and they are the proprietors of the charcoal depots. In other words, they are the dealers in charcoal. They challenge the validity of Rules 5 to 8 of the Andhra Pradesh Charcoal (Production and Transport) Rules, 1992 framed u/s 68 of the A.P. Forest Act. The rules are meant to regulate production, transport and trading in charcoal. Charcoal is a "forest produce" within the meaning of Section 2(g)(1) of the A.P. Forest Act. Rule 5 is the core provision which is challenged. It reads as follows:

5. (1) In the event of storage of charcoal for trade purpose, the person who intends to do the trade, should obtain a licence as provided in A.P. Forest Produce (Storage and Depot) Rules, 1989.

(2) Such licensee should maintain a register showing the details of receipt, disposal of charcoal and it should be in the Form appended to these rules.

(3) A quarterly abstract of total quantity of charcoal received and disposed with balance of stock on hand shall be submitted in the Form appended to these rules, to the Divisional Forest Officer concerned.

(4) If the quarterly abstract is not submitted before 15th of succeeding month, a penalty of Rs. 250/- per each month or part of the month for the delay shall be levied on the licensee.

Rules 6 to 8 of A.P. Charcoal (Production and Transport) Rules, 1992 are allied provisions providing for inspection of charcoal depots, seizure of charcoal in case of violations of the provisions of the A.P. Forest Act and the rules and laying down the procedure for dealing with the offences.

2. The learned Counsel for the petitioners submits that Rule 5 goes beyond the rule-making power of the Government. It is contended that there is no specific provision in Section 68 of the A.P. Forest Act which empowers the Government to make rules for the purpose of regulating trading in charcoal requiring the dealers to take out licences and to submit returns to the Forest Authorities. It is further submitted that Rule 5 does not also fall within the general rule-making power vested with the Government u/s 68 (1). According to the learned Counsel, the impugned rule does not subserve any of the purposes of the Act inasmuch as for the purpose of storage a licence is in any case required to be taken by the owner of the depot under the provisions of the A.P. Forest Produce (Storage and Depot) Rules, 1989. It is contended that insistence on another licence for dealing in charcoal is not contemplated by the Act and it is unreasonable to insist on two licences one under the storage and Depot Rules and the other under the impugned Rules. This contention proceeds on a fallacy. The licence which is required to be taken under A.P. Charcoal (Production and Transport) Rules, 1992 is nothing else than the licence provided for in A.P. Forest Produce (Storage and Depot) Rules, 1989. If a licence has been obtained under the latter rules (Storage and Depot Rules), no licence is required to be taken separately for the purpose of storage of charcoal for trading purposes. The petitioners have not stated in the affidavit that they have already got a licence under the Storage and Depot Rules. Be that as it may, it is enough if we clarify that the licence if any obtained under the A.P. Forest Produce (Storage and Depot) Rules will hold good for the purpose of Rule 5(1) of the impugned Rules as well. Incidentally, we may mention that if the petitioners are exclusively dealing in charcoal but not in timber or fuel-wood, there was no need for them to obtain any licence under the A.P. Forest Produce (Storage and Depot) Rules because in those rules, "forest produce" is given a special meaning confining it to all types of timber and fuel-wood and bamboos except those exempted. Though charcoal is included in the definition of forest produce u/s 2(g) of the Act, that wider definition is not adopted in the Storage and Depot Rules. Therefore, a person dealing in charcoal

and for that purpose required to store the charcoal, has to obtain a licence as per the rules contained in A.P. Forest Produce (Storage and Depot) Rules, but, it does not mean that in addition to a licence obtained under the said rules, one more licence has to be obtained under the A.P. Charcoal (Production and Transport) Rules, 1992. The licence, if any, obtained under the A.P. Forest Produce (Storage and Depot) Rules must be deemed to be a valid licence for the purpose of storing and dealing in charcoal. If he does not have a licence, the trader in charcoal should necessarily obtain a licence as provided under the A.P. Forest Produce (Storage and Depot) Rules. The other sub-rules viz., (2) and (3) require the licensee to maintain a register showing the details of the receipts and disposal of charcoal and submission of periodical returns of the quantity of charcoal received, disposed of and stock on hand. These sub-rules are ancillary to Sub-rule (1) of Rule 5 which requires a licence to be taken by a dealer in charcoal and they correspond to the similar Rules in Storage and Depot Rules. All these provisions are cumulatively meant to ensure that the charcoal dealers carry on the trade in a lawful manner and do not resort to malpractices. The charcoal being forest produce and it is often obtained from the forest growth and as there is also a shortage of charcoal as stated in the counter, the need for regulation arose and that object is sought to be achieved by framing these rules. We cannot say that the restriction prescribed by the rules in carrying on business in charcoal is an unreasonable restriction or that the impugned rules do not carry out the paramount purpose of the A.P. Forest Act which is the preservation and management of forests. We, therefore, find no substance in the writ petitions.

3. The two writ petitions are, therefore, dismissed subject to the clarification given above. No costs.