

(1972) 03 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Appeal No"s. 514 of 1971 and 7 of 1972

State of Andhra Pradesh and
Others

APPELLANT

Vs

Gattimukkala Venkatareddy and
Others

RESPONDENT

Date of Decision: March 4, 1972

Acts Referred:

- Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 - Section 2(5), 5, 7
- Constitution of India, 1950 - Article 226

Citation: AIR 1973 AP 68

Hon'ble Judges: Gopal Rao Ekbote, J; A.V. Krishna Rao, J

Bench: Division Bench

Advocate: Principal Govt. Pleader, for the Appellant; A. Raghuvir, for the Respondent

Judgement

Gopal Rao Ekbote, J.

These two appeals arise out of an order passed by our learned brother Parthasarathi, J., in W.P. No. 3387 of 1971. Since the questions raised in both these appeals are common, they can conveniently be disposed of by a common order.

2. The material facts in order to appreciate the contentions raised before us are that the respondents in W.A. No. 514/71 who are the appellants in the other appeal filed the above writ petition for the issue of a writ of mandamus directing the Government of Andhra Pradesh to forth with declare in terms of Section 7 of the act IV of 1971 the price at which the raw leaves and the sun-cured abnus leaves are to be purchased by Government. In the alternative the petitioners asked that if for any reason the Government should refuse to do so within a period to be specified by this Hon'ble court to declare that the petitioners are at liberty to sell their abnus leaves collected by them from their patta lands in open market at the prevailing

market rate, notwithstanding ACT IV of 1971.

3. The writ petitioners are the pattadars owning lands. Beedi leaves are grown by a natural process on these lands. Abnus leaves which are the produce of such growth, are characterised as minor forest produce in Act IV of 1971. The said act creates a monopoly in the Government in regard to the abnus leaves.

4. Section 2(5) defines " minor forest produce " to mean " any forest produce other than timber, trees (excluding bamboos) and charcoal, specified in the Schedule". The schedule mentions Abnus (or Tuniki or) leaves. Thus abnus leaves come within the definition of " minor forest produce".

5. Section 5 of the Act relates to the restrictions put on purchase or transport of minor forest produce. The section enjoins that upon the issue of a notification under sub-section (3) of Section 1 in respect of an area, no person other than the Government, or an officer of the Government authorised in that behalf of an agent applied for a unit shall purchase or transport any minor forest produce to which the act applies.

6. It was not doubted that although the Section puts a restriction of purchase by necessary implication, the restriction takes within itself selling of the abnus leaves also without which no question of any purchase can arise. Sub-section (3) of that section empowers the Government to frame rules laying down as to how a person desiring to sell any forest produce can sell the produce to the Government or the persons named in section 5, Section 7 then puts a statutory obligation on the government to fix the price of minor forest produce in consultation with the committee. Since it is relevant we would like to read it as far as it is relevant.

"The Government shall by notification and after consulting with the committee, fix the price at which any particular minor forest produce shall be purchased by them or by any authorised officer or agent, from growers of that produce and the price so fixed shall also be published in such other manner as may be prescribed not later than the 31st day of December,; and the price so fixed shall not be altered during the year to which the price relates."

7. In the discharge of this statutory obligation, the State Government issued G.O. Ms. No. 2344 dt: 28.12.1970, prescribing the price of the raw abnus leaves only. It does not fix the price for sun-cured leaves.

8. A batch of writ petitions was filed in this court questioning the validity of the above said G.O. The batch of writ petitions was allowed on 30.4.1971 although the detailed judgment was given subsequently on 10.6.1971.

9. The said decision strikes down the said G.O. as illegal and directed the Government to re-fix the price to be paid to the pattadars regarding abnus leaves.

10. Since the Government seems to have been aggrieved by that judgment and intends to go to the Supreme Court in appeal, they filed an application for leave to appeal to the Supreme Court. We are told that leave has now been granted, but no appeal has yet been preferred.

11. It is also a common ground that in pursuance of the direction given by this court in the said batch of writ petitions, the Government has not re-fixed the price of the abnus leaves although their request to suspend the operation of the judgment in the said cases was rejected.

12. The writ petitioners admittedly do not have in their possession raw abnus leaves. They have sun-cured them. They as stated earlier, wanted a direction against the Government to fix the price both of raw as well as of sun-cured abnus leaves. It is only in the alternative that they had asked for liberty to sell the sun-cured leaves which they have in their stock in open market.

13. The learned single Judge, before whom the writ petition came for hearing, by his judgment under appeal dated 10.12.1971, observed as follows:

"As the government pleader has not notified this court of the intention of the Government to fix the price, and as the time for the fixation of the price had expired long ago, it is just and reasonable to grant the declaration asked for by the petitioners that they are at liberty to sell the abnus leaves collected during the season i.e., in the first part of this year (1971). After the decision of this court, it was open to the government to have fixed the price and to have taken advantage of the monopoly created in their favour. But action has not been taken to fix the price. The consequence is that the obligation to sell has not arisen so far as the petitioners are concerned.

It has been suggested by the government pleaded that the petitioners could have delivered the produce to the government or authorised agents leaving it to the Government to fix such price as they might deem fit. In my view this suggestion is clearly incompatible with the provisions of the act. It is not the intention of the act to enable the Government to acquire forest produce in any manner other than by a sale effected voluntarily by the growers. To insist upon the delivery of the produce without fixing the price is not just; nor it is in accordance with the provisions of the act. It certainly does not amount to a sale but is nothing short of duress.

The result therefore is that the petitioners are entitled to a declaration that they are at liberty to sell in the open market the abnus leaves collected by them from their lands on the first half of this year. It follows that if such sales are effected, no restriction can be imposed by the authorities on the transport of the forest produce sold by the petitioners as per the directions hereby given."

14. The learned Judge accordingly allowed the writ petition in the manner indicated above.

15. Both the government as well as the writ petitioners do not seem to be satisfied with the way in which the writ petition was disposed of. Hence these two appeals before us.

16. In so far as the appeal preferred by the government is concerned, we find sufficient strength in the contention of the learned Government pleader that the declaration granted by the learned Judge and direction given in the said judgment is contrary to Section 5 of the Act. The function of the mandamus is to force the Government to carry out their statutory obligation and not to direct them to act contrary to the provisions of the act. In this case, it has already been brought out that Section 5 puts restriction upon the persons from selling abnus leaves to anyone except the Government or its authorised agent. This court can therefore grant a mandamus to carry out the purpose of the said section and it would not be proper for this court to allow persons to sell the abnus leaves to anyone else not authorised by section 5. It will be contrary to Section 5 and would therefore be improper.

17. If the result of the mandamus, it is disobey a law validly enacted by the Legislature, such a writ of mandamus obviously cannot be issued. We are therefore satisfied that the learned Judge has obviously done wrong in declaring that the writ petitioners will have freedom to sell the minor forest produce, that is to say, abnus leaves, in the open market. There is nothing like an open market for the enactment so far as the abnus leaves are concerned. We would therefore allow the appeal of the government and set aside the order of the learned Judge in that behalf.

18. We then turn to the appeal filed by the writ petitioners. The first question to which we must address ourselves is whether the provisions of Section 5 and 7 apply to sun-cured abnus leaves also. We have already extracted the definition of " minor forest produce". Even a casual reading of that definition would disclose that any minor forest produce specified in the schedule comes within the purview of the Act. Since abnus leaves are mentioned in the schedule, they are covered by the Act. No attempt was or could be made to confine the operation of the act only to raw abnus leaves. It would be reading something in the Act which does not exist there. Neither this court can add to the schedule of any manner. The term " abnus" leaves used in the schedule would take within its fold for not only the raw abnus leaves but also sun-cured abnus leaves. That is so because it could not be brought to our notice from the said act that the growers are precluded from sun-curing raw abnus leaves. In the absence of any such restriction on their right to hold abnus leaves, they are free to either continue to possess abnus leaves in the raw form or sun-cure them.

19. Section 5 likewise puts restriction on purchase not only in reference to raw abnus leaves but also in regard to sun-cured leaves. If that understanding of the section is considered as wrong; then there would be no restriction upon the purchase or sale of sun-cured leaves. The learned Government pleader therefore was right in conceding that even sun-cured abnus leaves come within the embrace of Section 5 of the act.

20. It that is so, then Section 7 must necessarily cover the sun-cured abnus leaves. It becomes therefore a statutory obligation of the Government to fix the price of the sun-cured abnus leaves also. This obligation has not been discharged by the Government so far. Admittedly, the notification, G.O. No. 2344 dated 28.12.1970 fixed the price of raw abnus leaves only. Right from the date when the act was brought into force, therefore, the Government has not fixed the price in regard to sun-cured abnus leaves. The position therefore now which prevails is that the Government has got the monopoly both in regard to raw as well as sun-cured abnus leaves. While it had fixed the purchase price of raw abnus leaves, it has so far failed to fix the price for sun-cured leaves. Even the price which they had fixed for raw abnus leaves by a notification has been struck down. The government has not re-fixed any price even for raw abnus leaves. The direction given by this court in W.P.M.P. No. 5252 of 1971 has also not been carried out by the Government. The directions was given by a learned single Judge of this court on 10.9.1971 that the Government should fix the price of the abnus leaves within four weeks from that date. The order either covers both the raw and sun-cured abnus leaves or in any case must cover sun-cured abnus leaves because the writ petition is mainly concerned with sun-cured abnus leaves. Although, thus the Government has monopoly, it does not discharge its obligation to fix the price and take possession of the sun-cured abnus leaves from the petitioners. The petitioners evidently cannot sell sun-cured abnus leaves to anyone else except the Government or its authorised agent. The Government certainly is not entitled to adopt dog in the manger policy. Once it takes upon itself the monopoly of abnus leaves, it should do everything in its power as quickly as possible so that the compulsory purchase of raw abnus leaves as well as the sun-cured leaves must be effectuated without allowing this perishing material to deteriorate or the growers to suffer.

21. In these circumstances, the question is to what relief the petitioners are entitled. They have been holding the sun-cured abnus leaves in their possession since the relevant season of 1971. We are nearing the end of that season as April 1972 is fast approaching. Therefore, we have reached the conclusion that it is a pre-eminently fit case in which a mandamus should be issued to the government to discharge their statutory obligation cast on them by Section 7 of the act, an obligation which they have so far not discharged and no satisfactory explanation has been offered to us as to why they failed to discharge that obligation.

22. We would therefore issue writ of mandamus directing the Government to fix the price in pursuance of Section 7 of the act of sun-cured abnus leaves within four weeks from today. The government is also directed to purchase the sun-cured abnus leaves of the season of 1971 lying with all the petitioners and pay the price so fixed by them to the petitioners at the time of purchase.

23. We would allow writ Appeal No. 7 of 1972 accordingly with costs. The government will pay the costs of the appellants. We do not make any order as to

costs in Writ appeal No. 514 of 1971. Advocate's fee Rs. 100/- in each case.

24. Appeal allowed.