

(1999) 02 AP CK 0072

Andhra Pradesh High Court

Case No: WA No. 153 of 1999

K. Narasimha Reddy and another

APPELLANT

Vs

Government of A.P., Forest
Department, Hyderabad and
others

RESPONDENT

Date of Decision: Feb. 19, 1999

Acts Referred:

- Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 - Section 1, 13, 4, 5
- Constitution of India, 1950 - Article 141, 298, 299

Citation: AIR 1999 AP 388 : (1999) 2 ALD 336 : (1999) 2 ALT 453 : (1999) 1 APLJ 374

Hon'ble Judges: M.S. Liberhan, C.J; A.S. Bhate, J

Bench: Division Bench

Advocate: Mr. T. Dhanu Bhanudu, for the Appellant; Government Pleader for Forests and Mr. Sriram Krishna Murthy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.S. Liberhan, CJ

1. The appellants, hereinafter referred to as the petitioners, impugned the advance sale notice for collection of Abnus (beedi) leaves during the year 1999 season by inviting sealed tenders for purchasing leaves to be collected from the Government lands and purchased from registered Growers in terms of the Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971, hereinafter referred to as "the 1971 Act", and the Andhra Pradesh Minor Forest Produce (Regulation of Trade in Abnus leaves) Rules, 1970, hereinafter referred to as "the Rules", and the Andhra Pradesh Forest Act, 1967, hereinafter referred to as "the 1967 Act" and the rules made thereunder, hereinafter referred to as "the 1967 Rules".

2. Relevant part of the tender as well as the proposed agreement referred to by the Counsel for the appellants to make his submissions may be noticed as under:

"Sealed tenders are invited from persons or parties registered as manufacturers of beedi or exporters of abnus leaves as required by the Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 and the Andhra Pradesh Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules, 1970 as modified from time to time and those desirous of purchasing green abnus leaves to be collected from Government lands and purchased from registered Growers during 1999 Beedi leaves season."

3. The tenders were issued by the Andhra Pradesh Forest Development Corporation Limited, Hyderabad. The term of the proposed agreement in the context of the Andhra Pradesh Forest Development Corporation Limited, being agents to the Government u/s 4 of the Act and the Rules, having agreed to appoint the tenderer as purchaser of all leaves in raw (green) form which are purchased or likely to be purchased, collected or likely to be collected in unit, runs thus:

"Whereas trading in Abnus leaves in the State of Andhra Pradesh is regulated by the provisions of the Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 (Act 4 of 1971) and the Andhra Pradesh Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules, 1970 made under the said Act. The Andhra Pradesh Forest Act, 1967 and the Rules made thereunder and any statutory modification thereof insofar as they are applicable to such trade."

4. The sole submission made by the learned Counsel for the appellants; is that the 1971 Act deals with the minor forest produce grown in private lands and does not deal with the one grown in the Government land. Consequently, the notice issued purporting to deal with the sale of the leaves to be collected from the Government lands under the 1971 Act is without authority, jurisdiction and illegal. The State dealing with an Act not applicable and as a consequence of which the sale would not be an action authorised by law and hence illegal. It was submitted that Section 5, which deals with the minor forest produce whether it is grown on private land or the Government land, is contrary to the judgment of the Supreme Court as well as the object of the Act. The Act of the Corporation is violative of Article 298 and 299 of the Constitution . The learned Counsel for the appellants vehemently contended that the provisions of Orissa Act are in pari materia with the provisions of the Andhra Act and whereas Orissa Forest Act is in pari materia with the Andhra Act, 1971. Consequently, the decision arrived at by the Supreme Court reported in [Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others](#) , after taking into consideration the object and the provisions of the Act, while considering the question that after coming into operation of the Orissa Act, whether the contract already entered into stood rescinded, the observation made that the Act does not apply to the forest produce grown in Government land and it only dealt with the forest produce grown in private land. It was submitted that absence of parallel

provisions for rescinding of the subsisting contract under the Andhra Act of 1971 is of no consequence. Thus, the tenders invited for sale of the minor forest produce in the Government land cannot be sold under the Act.

5. Section 5 of the 1971 Act put a restriction on purchase or transport of minor forest produce by any person, other than the Government or an officer of the Government authorised in writing by them in that behalf or an agent appointed for a unit to sell or purchase or cure or process or collect or store or transport any minor produce to which this Act applies. By way of explanation, it was explained that any sale to or purchase from the Government, the authorised officer or the agent of the minor forest produce shall not be deemed to be a sale or purchase contravening the provisions of the Act. It authorised the registered grower to collect minor forest produce from his land and transport to the nearest depot within the unit in which his land is included. It authorised the purchaser of the produce from the Government or from its authorised officer or an agent to deal with it in accordance with the terms and conditions of the permit to be issued in the prescribed manner. It authorised the grower to sell the produce to the Government and debarred him to carry on any trade or business or carry on any industry with the use of minor forest produce to which this Act applies.

6. The learned single Judge after appraising the object and the scheme of the Act came to the conclusion that Section 5 deals with all the forest produce whether grown, either in private lands or in Government lands comprised within the notified area, u/s 1 subsection (3) corroborating the finding from a reading of sub-section (1) of Section 5 explanation. It was held that putting a restricted meaning on Section 5 that it was only applicable to the minor forest produced on a private land would be illogical and contrary to the settled principles of statutory interpretation. It was further found that in terms of the 1971 Act the Corporation was appointed as an agent for the Government for purchase and trade in the leaves during the year 1999.

7. It would be expedient to reproduce Section 5 of Andhra Act of 1971 and Section 5 of the Orissa Forest Produce (Control of Trade) Act, 1981 in order to appreciate the arguments advanced by the learned Counsel, anchored on the findings written in the judgment reported in Utkal Contractors and Joinery Pvt. Ltd. (supra).

Andhra Act, 1971 :

"5. Restriction on purchase or transport of minor forest produce :--(1) Upon the issue of a notification under subsection (3) of Section 1 in respect of an area no person other than,

(a) the Government, or

(b) an officer of the Government authorised in writing by them in that behalf (hereafter in this Act referred to as the authorised officer), or

(c) an agent appointed for a unit;

shall sell or purchase or cure or otherwise process or collect or store or transport any minor produce to which this Act applies.

Explanation :--Any sale to or purchase from the Government, the authorised officer or the agent of a minor forest produce shall not be deemed to be a sale or purchase in contravention of the provisions of this Section.

(2) Notwithstanding anything in subsection (1):

(a) a registered grower may collect any minor forest produce from any land belonging to him on which such produce is grown and may transport the minor forest produce so collected from such land to the nearest depot within the unit in which the said land is included, and

(b) minor forest produce purchased from the Government or from any authorised officer or agent by any person for manufacture of finished goods within the State using such produce outside the State may be cured or otherwise processed or stored or transported by such person within or outside the unit in accordance with the

Orissa Act, 1981 :

"5. Restriction on purchase and transport and rescission of subsisting contracts :--(1) on the issue of a notification under sub-section (3) of Section 1 in respect of any area -

(a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area shall stand rescinded, and

(b) no person other than-

(i) the State Government,

(ii) an officer of the State Government authorised in writing in that behalf, or

(iii) an agent in respect of the unit in which the specified forest produce is grown or found, shall purchase or transport any specified forest produce in the said area,

Explanation I:--"Purchase" shall include purchase by barter.

Explanation 11:--Purchase of specified forest produce from the State Government or the aforesaid Government Officer or agent or a licensed vendor shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation III :--A person having no interest of the holding who has acquired the right to collect the specified forest produce grown or found on such holding shall be deemed to have purchased such produce in contravention of the provisions of this Act.

(2)(a) Notwithstanding anything contained in sub-section (1), the grower of forest produce other than Mohua may transport his produce from any place within the unit wherein such produce is grown or found to any other place in that unit, and a grower of Mohua may transport the Mohua grown by him from any place within the District wherein such Mohua is grown or found to any place within that District.

terms and conditions of a permit to be issued in that behalf by such manner as may be prescribed.

Explanation :--For the purposes of this clause, the expression "transport by such person within or outside the unit" means the transport of minor forest produce at all stages including the transport to any subsidiary distribution centre situated at a place of work or manufacture.

(3) Any person desiring to sell any minor forest produce may sell the produce to the Government or the authorised officer or agent in such manner as may be prescribed.

(4) No grower shall carry on,

(a) any trade or business in

(b) any industry with the use of,

the minor forest produce to which this Act applies except in accordance with the provisions of this Act or the rules made thereunder."

(b) Omitted by Orissa Act 15 of 1987,

(c) Any specified forest produce purchased from the State Government or , any officer or agent specified in the said sub-section by any person or manufacture of goods within the State in which such specified forest produce is used as raw material or by any person for sale outside the State or by a licensed vendor may be transported by such person or vendor in accordance with the terms and conditions of a permit to be issued in that behalf by such authority and in such manner as may be prescribed; and

(d) Any person having right to that effect over any forest in respect of any specific forest produce under any law for the time being in force, may transport such produce for his domestic use or consumption in such a quantity and subject to such terms and conditions as may be prescribed.

(3) Any person desiring to sell any specified forest produce may sell them to the aforesaid Government Officer or agent at any depot situated within the unit wherein such produce was grown or found:

Provided that State Government, the Government Officer or the agent shall not be bound to repurchase specified forest produce once sold.

(4) Any person who has paid any amount as an advance in respect of any such contract as is rescinded under subsection (1) shall on an application made to the prescribed authority within six months from the date of issue of the notification referred to in the said subsection, be entitled to the refund of such portion of the amount of advance as is proportionate to the unexpired portion of the period for which the contract was entered into."

8. The Honourable Supreme Court on the factual context of the case: The Company entered into an agreement providing for sale and purchase of Sal seeds falling on the ground in the forest. During the pendency of the agreement Orissa Act of 1981 was enacted with an object of creating monopoly for sale and purchase of the Sal seeds. It provided rescinding of the contract. While examining the questions whether the purchase of Sal seeds grown in Government Forests is outside the purview of the Orissa Forest Produce (Control of Trade) Act, 1981 and whether such a contract is saved under the Explanation to Section 5, the Honourable Supreme Court testing the arguments raised on the well established principle of interpretation of statute and dealing with text in context of facts and statutory provisions of the said Act observed that the whole Act deals with the sale of the forest produce grown in private holdings and purchased by the Government and it did not deal with the sale of forest produce from the Government lands as the provisions of sale of the forest produce are restricted to forest produce purchased by the Government. Thus, in the test and context of the said Act observed that the Act does not apply to the forest produce grown in the Government forests/lands, thereby the contract to collect seeds from Government forests/lands does stand rescinded by operation of the statute.

9. Reading of Section 5 of the Andhra Pradesh Act, providing for restriction on the purchase or transport of the minor forest produce, provides for that no person other than the Government shall sell or purchase or cure or otherwise process or collect or store or transfer any minor produce to which this Act applies. The Orissa Act to which the appellants have again and again referred to, provides a restriction on purchase, transport and rescission of subsisting contracts. Though on the first look of the heading does give an impression that the provisions are in pan materia but on bare reading the Section of Andhra Pradesh Act, 1971, muchless in substance, makes it clear that it is the Government viz., its authorised officer or its agent, who alone can and shall sell or purchase or cure or otherwise process or collect or store or transfer any minor produce under the Act. While under the Orissa Act, all agreements entered into after coming into its operation stood rescinded and no person other than the State Government would transport or purchase the forest produce in the said area, it does not confer any specified power of sale on the Government, rather puts a restriction on the sale by a person desirous to sell any specified forest produce to the State Government alone. Reading of both the Sections makes it categorically clear that the right to sell or collect or deal with in any manner, as referred to above, vests in the Government under the Andhra

Pradesh Act, 1971. Thus, the contention raised by the learned Counsel for the appellants that the Government has no power to sell the green Abnus leaves to be collected from the Government lands or purchased from the registered growers have no authority to sell under the 1971 Act cannot be sustained. The power to sell, being a specific power, vesting in the Government under the statutory provisions cannot be controlled by the heading of the Section. Neither any other meaning other than the power to sell vesting in Government by express provision can be inferred nor any bar on the Government right to sell can be implicitly read into the statute, nor reading of scheme of Act leads to such an inference.

10. It is well established principle of interpretation of statutes that where the statute is clear and specially in consonance with the Act, that is vesting, controlling or regulating the sale and purchase of minor forest produce, by interpretative law one cannot restrict the right of the State to sell its assets or properties, specially in terms of the statutory provisions which provides expressly as well as impliedly the Government or its authorised officer, or agent to perform the functions provided by the Act i.e., sale etc.

11. There is a categorical distinction between the Andhra Act and the Orissa Act. The Orissa Act specifically provided for a bar to purchase or transport the forest produce grown or found by a person other than the Government. That is not the case in hand. The Andhra Act specifically provides for barring the sale or purchase and the other Acts specified by the persons other than the Government. Thus, it is categorically inferable that the Government alone or its officer or its agent who can sell or purchase the forest produce as provided by the Act. Otherwise too, Government being the owner of Forest produce and is free to deal with in best manner and advantageous to it, which mean it can sell also as the right to do so is inherent in title to the property.

12. The learned Counsel for the appellants relied on the decision reported in [Marathwada University Vs. Seshrao Balwant Rao Chavan](#), , in order to contend that when an Act prescribes particular body to exercise the power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for delegation. So far as the bare proposition of law as laid down by the Honourable Supreme Court is concerned, there is no dispute. But the proposition of law laid down is not attracted to the facts and circumstances of the present case. The Government has a right to sell and purchase, which has been admittedly delegated to the Corporation established to carry out its functions. Delegation of power is provided by Section 13 of the 1971 Act.

13. The learned Counsel for the appellants relied on a decision reported in [Jaikishan Dass Mull Vs. Luchhiminarain Kanoria and Co.](#), , in order to contend that when contract is invalid, every part of it would be invalid, including the arbitration clause contained in it. There is again no dispute, with the proposition of law laid down by the Honourable Supreme Court. But, we find the contention of the learned Counsel

for the appellants to the effect that since the heading "inviting tenders for purchasing green Abnus leaves from the Government" is invalid being violation of the 1971 Act as Government does not possess power to sell the minor forest produce under the Act. Consequently after inviting by tender under the Act is invalid thereby rendering other terms invalid since, as observed in the earlier part of the judgment, the Government has a power to sell consequently the basis of the contention cannot be sustained. It was observed that the law laid down in Utkal Contractors case (supra) is not applicable to the facts and question arising the present case in view of provision of Andhra Act, 1971 that the principle relied is not relevant to the question raised and answered in the appeal in hand.

14. The proposition of law relied upon by the Counsel for the appellants laid down in [Panchugopal Barua and others Vs. Umesh Chandra Goswami and others](#), to the effect that the Act cannot made applicable by a judicial order as it amounts to enacting legislation by Court, which power is not vested in the judiciary as well as the power of equitable jurisdiction under Article 226 must be exercised so as to prevent perpetration of legal fraud and to promote honesty and good faith. We fail to comprehend how the said propositions of law are applicable to the facts of the present case. There is no gain-saying that the 1971 Act is a State legislation, which is applicable to the State. Again, there is no gain-saying that right to sell specifically vests in the State Government, including the other rights specified by Section 5 to deal with the minor forest produce.

15. The learned Counsel for the appellants further relied on a decision reported in [Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works \(P\) Ltd., and another](#), in order to contend that when the position of law is well settled by judicial pronouncements of Supreme Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position and deprecating the tendency of passing whimsical order having the effect of wrongful or unwarranted relief to one of the parties. We fail to comprehend, as observed in the earlier part of the judgment that the law laid down by Utkal Contractors" case (supra) while interpreting the totally different statutory provisions which do not even remotely deal with the proposition of law canvassed by the learned Counsel for the appellants in the present case, though even the statutory provisions being distinct and cannot be read as attempted by the learned Counsel for the appellants. It can be said that the law laid down by the said judgment covers the facts and circumstances or the law or the legislation involved in this case. Apart from the fact that the observations in the said judgment were made in the text and context of the said case a specific question, which is not being either canvassed or raised in the present case.

16. There is again no dispute with the proposition of law laid down in AIR 1997 3127 (SC) , to the effect that the law laid down by the Honourable Supreme Court is the

law of the land under Article 141 of the Constitution and it binds all Courts within the territory of India. Therefore, all parties and all the Courts in the country are bind by the law declared by the Honourable Supreme Court. In view of the question raised, legislation pressed into service in order to support the question raised and arguments addressed as observed in the earlier part of the judgment, we find no force in the contention of the learned Counsel for the appellants that the contention raised is even addressed or was answered or even was raised in the judgment relied on i.e., Utkal Contractors" case (supra). Though the learned Counsel for the appellants repeatedly laid emphasis that monopoly is created in the State, even accepting the said argument that monopoly is created in the State, the statute itself has vested the right in the State to purchase or sell as referred to by Section 5, at the cost of repetition for facilitation, it may be referred to :

"No person other than the Government, etc., shall sell or purchase or cure or otherwise process or collect or stores or transfer any minor produce to which this Act applies."

It categorically confers a power^{p1} on the State to sell expressly as well as by necessary implication. It will be totally illogical to assume that the State cannot sell and only purchase inspite of statutorily providing debarring a person to sell and permitting only the State to sell that the State would have no right to sell as canvassed, by the learned Counsel for the appellants. Thus, the judgment cited is not attracted to the facts of the present case.

17. The judgment cited by the Counsel for the appellants in the case of [Chaitanya Kumar and Others Vs. State of Karnataka and Others](#), has been noticed only since it was cited at the Bar. Though the proposition of law laid down and relied upon the Counsel for the appellants to the effect that it is the Court's duty to uphold publicly mischievous executive actions which have been exposed and when arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. We find no such situation or facts in the present case. There is no arbitrary act of the State, there is no perversion of the jurisdiction, there is no mischievous action which the Executive has intended to carry out. The authorities are acting well within their jurisdiction and authority conferred on them by the Legislature.

18. The learned single Judge has categorically found that there is no question of rescission of contract arising in the present case and after referring to the scheme of the Act in its detail came to the conclusion that the minor forest produce purchased by the Government or its agent shall be sold or otherwise disposed of in the manner as directed by the Government or by its authorised agent subject to the conditions imposed by the Government. As observed, plain meaning of Section 5 itself confers a power of sale on the Government. We affirm the finding of the learned single Judge. The learned single Judge has further found that under the 1971 Act, the Government has appointed the Andhra Pradesh Forest Development

Corporation Limited as an agent of the Government exercising its power, for all the ten units of Telangana region. The said finding has not been challenged before us. No other question has been raised.

19. We find no force in the appeal. The same is dismissed.