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MADANLAL SETHI AND ORS. ETC.

v.

STATE OF M.P. AND ORS. ETC.

MARCH 27, 1997

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[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Madhya Pradesh Kashtha Chiran (Viniyaman) Adhiniyam, 1984 : Sections 7, 8, 9 and 13.

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M.P. Transit (Forest Produce) Rules, 1961 : Rules 6(1)(2), 8, 9 and 27.

Constitution of India, 1950 : Article 19(1)(g).

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Forest Produce—Purchase from Government depot—Accountability of purchaser-licensee—Procedure and requirement to maintain proper record of wood purchased—Validity of requirement—Held the Act deals with various steps involved starting right from the cutting of the trees upto the delivery of the logs to the purchasers—Thereafter it deals with the requirement of being in lawful possession of the wood so purchased and the necessity to account for the same—Details to be kept by licensee are required only with the object of ensuring that the licensees 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—The Rules cannot be declared ultra vires the Constitution as offending Article 19(1)(g) or Article 14 simply 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.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2347 of 1986 Etc.

From the Judgment and Order dated 29.1.86 of the Madhya Pradesh High Court in M.P. No. 2017 of 1984.

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D.D. Thakur, G.C. Gupta, Prakash Shrivastava, A.K. Sanghi, S.V. Deshpande, Ashok Kr. Singh, S. Biswajit Singh and S.K. Agnihotri for the

appearing parties.

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The following Order of the Court was delivered :

Leave granted in SLP (C) No. 2184/93. We have heard learned counsel for the parties.

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These appeals by special leave arise from the judgment of the High Court of Madhya Pradesh, made on 29.1.1986 and 14.11.1992 in M.P. No. 2017 and M.P. No. 3764/92.

The primary question in this case relates to the validity of the Madhya Pradesh Kashtha Chiran (Viniyaman) Adhiniyam, 1984 (for short, the 'Act') and Rule 27 of the M.P. Transit (Forest Produce) Rules, 1961 (for short, the 'Rules'). The appellants have challenged the validity of the above provisions of the Act and the Rules on the ground that they require them to maintain proper records and duly enter in the register certain specifications of the forest wood purchased by them under public auction from the Government timber depots. After sawing and cutting the wood into different sizes, the appellants are required to make proper entries into the relevant register. When the consumer take out the wood from the timber depot, they are also required to submit a transit permit. Thereby, they have been made accountable to give particulars of the forest wood they purchase from the respective Government depots. It is stated that the licensees of the saw mills are being unnecessarily harassed by being asked to make numerous needless entries in the relevant register, like Forms D-1 and D-2 and thereby getting subjected to confiscation of the wood lawfully purchased by them. It is stated that this cumbersome process hinders their business. The prescription of the details required of them also impinges upon, and restricts their business. Thus, it is claimed that the Act and the Rules are arbitrary and unreasonable as they offend their fundamental right of freedom to carry on the business and trade under Article 19(1)(g) of the Constitution. The Division Bench, it is argued, has not correctly appreciated the grievance of the appellants. When the matter had come up for consideration before us in the first instance, by order dated December 19, 1996, we observed as under :

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"Shri S.S. Ray, the learned senior counsel appearing in this batch has concentrated on aspect, namely, that the Forest Officer, by a written undertaking have absolved themselves of their liability to

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A deliver the logs with specific measurements but will be delivered
only in the lots as they are. When they entered in Form-D under
Rule 6(1) Extract from M.P. Kashtha Chiran (Viniyaman) Ad-
hiniyam, 1984 read with Section 8 of the Adhiniyam, it enumerates
entry on open stock of the species, its Cmt. Sawan Cme., date, T.P.
B No., Name of Species Depot from which it was purchased logs,
Nos., Omt. Sawan Cmt. received from Cmt. the Forest Department
and other than Forest Department. Various grounds have been
raised in the SLP (C) No. 2104/93 arising out of the order dated
November 14, 1992 made in M.P. No. 3764/92 stating that it would
C be impracticable for the saw mill owners or merchant to make
necessary entries when they were not delivered with above
specifications and the non-compliance renders them forfeited their
stock and liable to prosecution. Shri Gulabe Gupta, the learned
D senior counsel appearing for the respondents states that in each
depot various types of the logs would be stocked in store of
different sizes at different places separately. Intending purchasers
were kept on notice of various sizes. A willing purchaser in the
open auction from the above lots each lot contains not only species,
E the length of the timber, it contains etc. the details will be available
on verification and satisfaction. On their purchase once they take
possession of the logs, they require to enter these details in Form-
D1. Similarly, after taking over to the saw mill, they require to fill
F in detail in Form-D2. He further explains Form-D2 with reference
to rule 6(2) of the rules relate to the owner of the saw mill who
receives it into the saw mill and opening balance received during
the day and the quantum sawn during the day, delivered to the
G owners (purchasers - the balance on the date require to be entered.
Similarly, Form-D3 relates to monthly abstract of the receipt and
disposal of the wood purchased or brought for sawing during that
month and disposed of. Accordingly, there is no difficulty in filling
up all these forms in actual practice. Unfortunately, the Govern-
H ment have not filed any counter nor produced any material in
support of the contentions learned counsel seeks to impress upon
us. It is necessary in the circumstances that a counter-affidavit by
a competent officer requires to be filed and also the material in
support thereof requires to be produced before the Court. Learned
counsel seeks for and granted on month time for filing the counter-

affidavit and producing the record. On week thereafter for A
rejoinder is granted. List after five weeks."

Pursuant thereto, Dr. M.S. Rana, Conservator of Forest, Government B
of Madhya Pradesh, Sagar has filed a counter- affidavit explaining in detail
the position right from identification of the working plan, demarcation of
the coupe-wise felling of the trees, stacking of the trees, numbering of the
trees, putting of hammer marks and their aligning for measurement at the
timber depots for auction. It is stated that the logs are stocked depending
upon their length, girth etc. at relevant places in the depot. The intending
purchasers are given liberty to inspect the logs of the length, girth and
measurement in cubic meters, species etc. Thereafter, on their purchase in C
auction, possession of the purchased logs is given possession to the suc-
cessful bidders. Necessary entries are be made in the Certificate of Posses-
sion as given in Annexure XI to the said counter-affidavit finding place at
page 98 of the paper book; the details thereof being not material are
omitted. Once they take possession of the timber, they are given necessary D
transit permits for transportation thereof with truck number etc. as
specified in Annexure XIV to the counter-affidavit and the officer who
gives delivery thereof enters the factum of the delivery, of the quantum of
the wood with all specifications enumerated therein. After carriage of the
logs from the various depots to the premises of saw-mills or saw-pits, they
are required to enter the specifications in Form D-1 as per Rule 6(1).
When they dispose of the woods, they are required to make necessary E
entries in Form D-2 read with Rule 6(2) of the Rules. In addition, they are
also required to submit monthly returns in Form D-3 read with Rule 8 of
the Rules.

Thus, it is the case of the respondents that every care is taken to F
ensure that the licensee or person in charge of the saw mill or saw pit is
given possession of the wood purchased from the Government depots and
are required to enter the specified details of the wood in Form No. D-1
and of the finished product in Form D-2 so that at every point of time the
officer on duty of inspection would be in a position to verify whether the
wood in possession has been purchased by the licensee from lawful source; G
is properly accounted for; is in their lawful possession; and to see that the
disposal of the same is done in accordance with the Rules.

Shri D.D. Thakur, learned senior counsel and Mr. A.K. Sanghi,
learned counsel appearing for the appellants, contend that though the H

- A Rules require that specifications of the forest wood kept in saw-mill and saw-pit be recorded, in reality when the wood is taken to the saw-mill and is cut into logs of different sizes, there would be considerable wastage and the finished wood realised by sawing the logs would be less than the original length and girth etc. It is really impossible for the licensee to enter all those specifications in the relevant entries in Form D-1, D-2 and D-3 etc. and to account for the wood they purchased. Therefore, it hinders their peaceful conduct of the business. As one of the illustrations, it is stated that one of the Division Forest Officers even meticulously measured zero point of the differential wood in the possession of the saw mill and on failure to account for it, took action by confiscating the entire wood. That would show that by operation of the Act, licensees are being arbitrarily prevented from exercising the right of freedom to carry on trade and business and are being subjected to needless harassment.

- D Shri D.D. Thakur has also stated that necessary guidelines are lacking in this case. Therefore, observations may be made by this Court to stop arbitrary exercise of the power or unlawful hinderance in carrying out the trade by the licensees; and to permit high rank officers to inspect the premises.

- E Shri G.C. Gupta, learned senior counsel appearing for the respondents, contends that the contentions raised by the appellants are imaginary. Every minute procedure has been provided in detail, viz. the cutting of the trees; the marking of the trees; the delivery of the wood purchased from the Government depots; and transporting them, which would indicate that the object of the Act and the Rules is only to ensure that the licensee is in lawful possession of the wood obtained from the Government depots to prevent illicit felling of the trees and unlawful purchase of the forest wood. The Act and the Rules provide that the licensee should account for the wood purchased and the finished wood; that cut pieces are appropriately accounted for, as specified in Form D-1, D-2 and D-3 respectively. As an illustration, he has placed before us the record of the appointment of an Expert Committee on the basis of the returns received and specifications of the grading of the wood, their lengths, girth and the marginal variations in that behalf; and categorisation of the respective woods in that behalf. As a result, even if there is any faulty entry in the transit Rules, they can be easily identified with reference to the length, girth and the quantum of the wood purchased by the licensee. If there is any further defect, it is always

open to them to bring the same to the notice of the Government and the Government would always solve the problem of the parties. A

It view of the respective contentions, the question arises : whether the High Court has committed any manifest error of law warranting interference? It is seen that the Act deals with various steps involved starting right from the cutting of the trees upto the delivery of the logs to the purchasers. Thereafter it deals with the requirement of being in lawful possession of the wood so purchased and the necessity to account for the same. B

Section 8 deals with furnishing of returns by the licensee. It postulates that every licensee shall submit such return relating to the business of the saw-mill or saw-pit, as the case may be, in such form, to such officer, and on such dates, as may be prescribed. Section 9 deals with maintenance of account of stock of wood in saw-mill and saw-pit. It postulates thus : C

~"All wood whether sawn or not found in or brought to the saw mill or saw pit or at the site of sawing at any time or during any period by any person in any manner or by the means for purpose of sawing or for any other purpose shall always be properly accounted for and all relevant evidence documents, receipts, order and certification as are necessary to show that the wood is legally obtained shall be maintained and made available at the time of inspection. It shall be presumed in respect of the stock of wood which is not account for satisfactorily that the same has been obtained unlawfully and the stock of wood shall be liable for confiscation." D E

The object of Section 9 is to ensure that the wood obtained by the licensee and found in saw-mill or saw-pit is the one obtained from a lawful source and the person in possession of the wood or in control of the saw-mill is to account for and is required to maintain the details of the wood obtained, the source and the manner in which he has dealt with the wood. It postulates that it shall be presumed, in respect of stock of wood which is not accounted for satisfactorily, that the same has been obtained unlawfully and such stock of wood shall be liable for confiscation. Section 7 gives power to the authorised officer to enter and inspect any saw-mill and saw-pit and examine the records relating to stock of wood etc. for that purpose. He is empowered to call upon the licensee or person in control of or management of the business, or employed therein, to produce the F G H

- A required documents, books, registers or records in the possession. They are also entitled to search the premises. Vehicles, machine, tools and equipments used or intended to be used in contravention of any of the provisions of the Act and the Rules made thereunder. When they are satisfied that any such contravention has taken place, they are entitled to seize any wood etc. and take appropriate action as has been laid under the
- B Act for confiscation etc. The Rules have been made in that behalf. Section 13 prescribes the penalties for contravention; the details thereof are not material for the purpose of this case. Rule 6 of the Rules provides that the licensee is required to submit the returns in Form D-1, of the wood purchased by the licensee for sawing and for disposal thereof, and Rule
- C 6(2) postulates the maintenance of a register meant for recording the arrival, sawing and disposal of the wood received for sawing in Form D-2. Thereafter, under Rule 6(3), the licensee is required to submit the monthly returns of these accounts in Form D-3 to the concerned Range Officer, and to the licensing officer by a date not later than 10th of the following
- D month.

- 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 licensees who are the persons in the control of the saw-mill and saw-pit or employee etc.
- E 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
- F should face the consequences ensuing 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. It is stated by Mr. G.C. Gupta that the Govern-
- G ment would issue necessary orders making those instructions as a part of the Rules so that it will be operative as a continuous process of the identification of the woods right from the stage of purchase till the stage of accounting for in Form D-3.

- H It is true, as shown by Mr. Sanghi, that one of the conditions of the

auction is that the authorities are absolved of their liability for any deficiency in the quantity and quality of the timber and of the measurements when the intending bidder purchases the logs in the forest timber depots. That is one of the conditions of the auction, i.e., quality and quantity of wood is not assured. The Government is absolved of the liability for any shortcoming in the quality and quantity of the wood the appellants purchase from the Government. Thereafter, there are provisions that the empowered officer would inspect the premises and verify the wood purchased to satisfy himself of the source of the wood found in the depot and also purchase of the logs either in auction and the mode of disposal of the wood according to the Rules. However, that does not mean that the licensees are kept in dark as to the details of the wood purchased by them. As seen earlier, the detailed procedure has been prescribed in the relevant forms in that behalf from the time of felling of the trees till the entrustment of the purchased logs to the auction purchaser. The transit permit issued to the purchaser does contain the same details with the number of the truck carrying the wood. The meticulous details is 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 D-1, of finished goods in Form D-2 and monthly returns in Form D-3. 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) or Article 14 simply 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.

Thus considered, we do not find any illegality committed by the High Court in its judgment warranting interference.

The appeals are accordingly dismissed. No costs.

T.N.A.

Appeals dismissed.