

PETITIONER:
MADANLAL SETHI & ORS. ETC.

Vs.

RESPONDENT:
STATE OF M.P. & ORS. ETC.

DATE OF JUDGMENT: 27/03/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:
WITH

CIVIL APPEAL NO.2740 OF1997
(Arising out of SLP (C) No. 2104 of 1993)
O R D E R

Leave granted in SLP (C)No. 2104/93. We have heard learnedcounselfor theparties.

These appeals by special leave arise fromthe judgment of theHigh Court of Madhya Pradesh, made on 29.1.1986 and 14.11.1992 in M.P No. 2107 and M.P No. 3764/92.

The primary question inthis case relates to the validity of the Madhya Pradesh Kashtha Chiram (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 valiity of the aboveprovisions of the Actand the Rules on the ground that they require them to maintain proper records andduly enter in the registercertain specifications of the forest wood purchased by them under public auction from the Governemnt timber depots. After sawingand cutting thewood into differentsizes, they appellantsare required tomake proper entriesinto the relevant register. When consumers take out the wood from the timber depot, they arealso required to submit a transit permit. Thereby, they havebeen made accountable to give particulars ofthe forest woodthey purchase from the respective Governmentdepots. It is stated that the licensees of the saw mills are being unnecessarily harassed by being askedto makenumerous needless entries in the relevant register , like Forms D-1 and D-2 and thereby gettingsubjected to confiscation of the wood lawfully purchased by them. Itis stated that cumbersome process hinderstheir business. The prescription ofthe details required of them alsoimpinges upon and restricts their business. Thus, it isclaimedthat the Act and the Rules are arbitrary and unreasonable as they offend their fundamental right of fredom to carryon thebusiness 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 inthe first instance, by order dated December 19, 1996, we observed asunder:

"Shri S.S. Ray, the learned senior counsel appearing in this batch has concentrated on one aspect, namely, that the Forest officers, by a written undertaking have absolved themselves of their liability to deliver the logs with specific measurements but will be delivered only in the lots as they are, when they entered in the Form-D under Rule 6(1) Extract from M.P. Kashtha Chiran (Viniyaman) Adhiniyam, 1984 read with section 8 of the Adhiniyam, it enumerates entry on open stock of the species, its Cmt., Sawan Cmt., date, T.P. No., Name of species Depot from which it was purchased logs, Nos, Cmt. Sawn 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 be impracticable for the saw mill owners or merchant to make necessary entries when they were not delivered with the above specifications and the non-compliance renders them forfeited their stock and liable to prosecution. Shri Gulabe Gupta, the learned 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, 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 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 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 in actual practice. Unfortunately, the Government has not filed any counter and has not 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 one month time for filing the counter-affidavit and producing the record. One week thereafter for rejoinder is granted. List after five weeks".

Pursuant thereto, Dr. M. S. Rana, Conservator of Forest, Government 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 stacked 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 auctions, possession of the purchased logs is given to the successful bidders. Necessary entries are made in the certificate of possession as given in Annexure XI to the said counter-affidavit finding place on page 98 of the paper books; the details thereof being not material are omitted. Once they take possession of the timber, they are given necessary 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 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 ensure that the licensee or person in charge of the Sawmill 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; 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 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 their right of freedom to carry on trade and business and are being subjected to needless harassment.

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.

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 cuts 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 which would always solve the problem of the parties.

In 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 up to 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.

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:

"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 any means for purpose of sawing or for any other purposes 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 time of inspection. It shall be presumed in respect of the stock of wood which is not accounted for satisfactorily that the same has been obtained unlawfully and the stock of wood shall be liable for confiscation."

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 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 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 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 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 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. 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 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 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 Government 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.

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 detail 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 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 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.