

Orient Paper And Industries Ltd. ... vs State Of Orissa And Ors. Etc on 30 October, 1990

Equivalent citations: 1991 AIR 672, 1990 SCR SUPL. (2) 480, AIR 1991 SUPREME COURT 672, 1991 (1) SCC(SUPP) 81, 1991 (1) UJ (SC) 75, 1991 UJ(SC) 1 75, (1990) 4 JT 267 (SC), 1991 SCC (SUPP) 1 81

Author: T.K. Thommen

Bench: T.K. Thommen, L.M. Sharma, K.N. Saikia

PETITIONER:

ORIENT PAPER AND INDUSTRIES LTD. ANDANR. ETC. ETC.

Vs.

RESPONDENT:

STATE OF ORISSA AND ORS. ETC.

DATE OF JUDGMENT 30/10/1990

BENCH:

THOMMEN, T.K. (J)

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THOMMEN, T.K. (J)

SHARMA, L.M. (J)

SAIKIA, K.N. (J)

CITATION:

1991 AIR 672 1990 SCR Supl. (2) 480

1991 SCC Supl. (1) 81 JT 1990 (4) 267

1990 SCALE (2) 907

ACT:

Orissa Forest Produce (Control of Trade) Act, 1981 :
Section 1(3) and 3 Amendment and Validation Acts 1987 and
1989 and Notifications dated September 21, 1988--Whether
null and void--Rescindement Of contracts--Permissibility of.

HEADNOTE:

The appellants/petitioners in each of the two Appeals Writ Petitions are contractors. They had entered into agreements with the State of Orissa in terms of which they had obtained exclusive rights and licences to fell, cut and remove bamboos from certain specified areas for the purpose of converting them into pulp. The agreements were due to

expire on 30th September 1989. These contracts were rescinded by the Orissa Forest Produce (Control of Trade) Act, 1981 (Act 22 of 1981) which, in respect of bamboos, came into force w.e.f. 1.10.1988, when Orissa Forest Produce (Control of Trade) Amendment Act, 1989 (Act 4 of 1989) came into force. By virtue of the provisions of the Act and the notifications issued thereunder, the contractors were divested of all their contractual rights.

Being aggrieved the appellants in both the appeals filed writ petitions in the High Court praying for a declaration that the Act 22 of 1981 and the notification of 21.9.1988 issued under Section 1(3) of the said Act have no application to the contracts entered into between the appellants and the State of Orissa and for a direction that the State be prohibited from enforcing the provisions of the said Act and to allow the appellants to cut and remove the bamboos from areas covered by the contracts. It was urged by the appellants that their rights in respect of bamboos are not annulled or affected by reason of Act 22 of 1981 as their rights are in the nature of profit a prendre, and thus not susceptible of repudiation by statutory rescission of contracts. They relied on a decision of this Court in State of Orissa and Others v. The Titaghur Paper Mills Co. Ltd. and Anr., [1985] 3 SCR 26. The High Court rejecting their contention that the rescission of their contracts did not affect their pre-existing rights which allegedly originated in grant inde-

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pendent of any agreement of parties, held that the contractors were replaced by the agents and that the decision in Titaghur's case did not deal with the question arising in the present case. The High Court accordingly dismissed the writ petitions. Hence these two appeals by the contractors.

The appellants Straw Products Ltd. Filed in this Court a writ petition under Art. 32 of the Constitution praying inter alia for a declaration that Act 4 of 1989 and the notification dated 21.9.1988 (S.R.O. No. 666 of 1988) and (S.R.O. 667 of 1988) are null and void. Orient Paper and Industries Ltd., the appellants in the other appeals also filed a writ petition for a declaration that Act 16 of 1987 and Act 15 of 1987 (1st and 2nd Amendment Acts) and Notification dated 21.9.1988 (S .R.O. No. 667 of 1988) are null and void.

Before this Court besides the arguments advanced before the High Court by the appellants/petitioners it was further urged that the Act suffers from the vice of excessive delegation of powers to the Government and separate notification should have been issued to bring the amended provisions into the principal Act. The respondent-State controverted the arguments of the appellants and asserted that the Acts in question are constitutionally valid.

Dismissing the appeals and writ petitions, this Court,

HELD: Any right or interest granted or recognised under

such agreement was not an independent or pre-existing right or interest to survive the statutory rescission of the contract. Legislation has superseded all inconsistent and contrary rights. No right or interest or grant, whether contractual or prerogative in character in origin, whatever be its nature, source and scope, can survive a superseding valid legislation. The decision in Titaghur is consistent with the proposition that all rights derived by the contractors, including profit a prendre were granted in terms of the agreements. All such rights are conditioned by and totally dependent on the agreements. Whatever mutual rights or obligations accrued or arose between the parties to those agreements are purely contractual in character and incidence. [495E-F & D]

All rights recognised under the bamboo contracts thus perished as from the date on which Act 22 of 1981 came into force in respect of bamboos in the areas in question, i.e. as from 1.10.1988 being the date specified in terms of section 1(3). [498B]

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While the protection and management of the forests, 22 of 1981, as its title and preamble indicate, are meant to control and regulate trade in forest produce by creating a State monopoly, the later statute has rescinded all contracts for the purchase, sale, gathering or collection of forest produce and has repudiated all rights created under such contracts and all grants of profit a prendre. The bamboo contractors, are, therefore, not entitled to claim any independent right inconsistent with the statute as from the date specified under Section 1(3) namely 1.10.1988. [500A-B]

Smuggling in forest produce has been a serious threat to national economy. No society can tolerate activities endangering the morale and economy of the people. This substantive evil with its corrupting and debilitating influence is sought to be remedied by legislative control of trade in forest produce through State monopoly. These measures are undoubtedly well within the province of the legislature and reasonable and rationally adapted to the end sought. [501F-G]

The legislative findings and the subject-matter of the legislation, the area of its operation; its purpose and intent; its legislative history; the objects and reasons for the amendment made consequent on judicial decisions, the vice that is sought to be remedied, the legislative response to compelling necessities; all this lends support to the presumption in favour of reasonableness, legality and constitutionality of the legislative actions in question. [501G-H]

All rights and interests contrary to and inconsistent with the statute accordingly stands' rescinded. There is no excessive delegation in such statutory grant of power. [502A-B]

M/s. Utkal Contractors and Joinery (P) Ltd. and Ors. v. State of Orissa, [1987] Supp. SCC 751 & [1987] 3 SCC 279; The State of Orissa v. Sudhansu Sekhar Misra and Ors., [1968] 2 SCR 155, 162; Krishna Kumar v. Union of India, JT (1988) 3 SC 173, 187, 192; Gangabai w/o Rambilas Gilda v. Chhabubai w/o Pukharajji Gandhi, [1982] 1 SCR 1176, 1182; Prakash Amichand Shah v. State of Gujarat and Ors'., [1985] Supp. 3 SCR 1025, 1052, Sreenivasa General Traders and Others v. State of Andhra Pradesh and Others' etc., AIR 1983 SC 1246; Attorney General v. De Kevser's Royal Hotel Ltd., [1920] AC 508; Thakur Jagannath Baksh Singh v. The United Provinces, AIR 1946 PC 127, para 17; East End Dwelling Co. Ltd. v. Finsbury Borough Council. 1952 AC 109, Shamrao V. Parulekar v. The District Magistrate, Thana, Bombay, [1952] SCR 683; Sardar Inder Singh v. The State of Rajasthan, [1957] SCR 605; Her Majesty the Queen v. Burah, [1877-78] 5 IA 178, 194-95; Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax and Ors., [1974] 2 SCR 879; Harishanker Bagla v. The State of M.P., [1955] 1 SCR 380, 388; Akadasi Padhan v. State of Orissa, [1963] Supp. 2 SCR 691; Hamdard Dawakhana (Wakf) Lal Kuan, Delhi and Anr. v. Union of India and Ors., [1960] 2 SCR 671, 678-79; Mahant Motidas v.S.P. Sahi, AIR (1959) SC 942, 948, referred to.

JUDGMENT: