

A.P. Scheduled Tribes Cooperative ... vs B. Pundiah And Ors. on 20 September, 1983

Equivalent citations: AIR1983SC1290, 1983(2)SCALE309, (1983)4SCC466

Bench: D.A. Desai, O. Chinnappa Reddy

JUDGMENT

1. The economic exploitation of the tribals living in the Rampachodavaram and other Agency areas in Andhra Pradesh by tradesmen coming from the plains is a notorious fact of recent history. One of the measures taken by the Government of Andhra Pradesh to stem the exploitation of tribals and to promote their economic interests and social welfare, was to establish a Corporation known as the Andhra Pradesh Scheduled Tribes Cooperative Finance and Development Corporation Ltd., a society registered under the Andhra Pradesh Cooperative Society Act. Amongst the objects of the Corporation were:

(1) to purchase outright the produce brought by the members of the scheduled tribes through the Agency of any primary marketing society, hereinafter referred to as "Affiliated Societies", and market it to the best advantage and for this purpose to take up forest contracts of bamboo coupes, fuel and for procurement of minor forest produce from the Govt., (2) to supply the requirements of the members of the scheduled tribes through the agency of the affiliated Societies by making bulk purchases; (3) to coordinate, supervise and control the activities of the affiliated societies, (4) to undertake activities such as processing and grading for the benefit of the Corporation and its affiliated Societies and their members, and for this purpose to own or hire the necessary plants and machinery (5) to own or hire and ply lorries on hire for the transport its goods and those of its affiliated societies, their members and others; (6) to discharge prior debts of the members of the scheduled Tribes; and (7) to undertake generally such other activities as are conducive to the promotion of the economic interests and social welfare of the members of the scheduled tribes and the attainment of these and other objectives.

2. Several 'minor forest produce leaseunits' were leased to the Corporation by the Government from time to time and it appears that ultimately it came to be realised that unless all the minor forest produce units were leased to the Corporation on a monopoly basis, exploitation of tribal by tradesmen would not cease. As a result of this realisation the Government of Andhra Pradesh decided to grant lease of minor forest produce lease units to the Corporation on a monopoly basis. So, by G.O. No. 142 dated 23rd January 1962 the Government purported to grant lease of the minor forest produce leaseunits in the Godavari lower division for a period of six years but in actual terms the G.O. only authorised the Corporation to collect seigniorage" from the purchasers of minor forest produce on all items collected by the Agency tribes from the unreserves of Rampa Agency. The tradesmen moved quickly in the matter. Four persons, two of them professing to be tribals residing

in the Rampa Agency and two non-tribals belonging to the plains, filed O.S. No. 4 of 1962 in the Court of the Agent of Government of Andhra Pradesh at Kakinada,

(a) for a declaration that the lease hold granted by the State Government to the 1st defendant consists of a "mere right to 30 collect seigniorage" " from the purchasers of the minor forest produce in the unreserves of the Rama Agency and that the tribals in the Rama Agency have a right to sell the minor forest produce in the unreserves of the Rama Agency at the notified Shan dies to whomsoever they liked and that the purchasers are entitled to so purchased on payment of remove the minor forest produce seigniorage" to the defendants, and

(b) for a permanent injunction restraining the defendants and their officials from in any manner interfering with the plaintiffs' exercise and enjoyment of the rights declared under Clause (a) supra:

Though Plaintiffs 1 and 2 professed to be tribals, it is easy to see that they were mere stooges of non-tribal tradesmen.

3. The suit was decreed on 10th March 1964 by the District Judge of East Godavari. The Government realised the mistake committed by them in authorising the collection of seigniorage" instead of minor forest produce in G.O. No. 142 dated 23rd January 1962 and in order to rectify the mistake issued G.O. Ms. No. 2645 dated 14th November 1965 suitably amending the earlier G.O. by replacing the entries mentioning seigniorage" with the entry "Right to collect minor forest produce from the unreserves of Rampa Agency". The Corporation preferred an appeal to the High Court. A learned single judge allowed the appeal but his judgment was reversed by a Division Bench under Clause 15 of the Letters Patent. The Division Bench found that under Rule 2 of the Special Rules for the management of the reserved and unreserved lands in the Rampa Agency of the East Godavari District all the permanent residents of Rampa Agency were empowered to gather minor forest produce throughout the said area, free of charge and without permits and that it followed therefrom that the persons who gathered the produce were entitled to deal with it as owners. It was held that the Government was not entitled to impose any restrictions contrary to the rules. Accordingly it was declared:

For the above reasons, we are of the opinion that the plaintiffs 1 and 2 who are permanent residents of the Rampa Agency are entitled to a declaration as prayed for that the lease hold granted by the State Government to the first defendant consists of a "mere right to collect seigniorage" " from the purchasers of the minor forest produce in the unreserved of the Rama Agency at the notified Shan dies to whomsoever they liked and that the purchasers are entitled to remove the minor forest produce so purchased on payment of seigniorage" to the defendants.

Though the lease in question was granted in 1962 for a period of six years and the lease has expired, we are informed that the lease has been renewed on the same terms for a further period. Therefore, the plaintiffs will also be entitled to the permanent injunction asked for restraining the defendants and their officials from in any manner interfering with the plaintiffs exercise and enjoyment of the rights

declared above.

The suit was however dismissed in so far as Plaintiffs 3 and 4 were concerned as they were not permanent residents of Rampa Agency.

4. The Corporation obtained a certificate under Article 133 of the Constitution as it stood before it was amended and has preferred this appeal. As it now turns out, it is no longer necessary for us to decide the questions which were agitated in the lower courts. The effect of the judgment of the Division Bench has now been nullified by the provisions of Andhra Pradesh Regulation 1 of 1979 made by the Governor of Andhra Pradesh under paragraph 5 (2) of the Fifth Schedule to the Constitution. In the interregnum between the date of the judgment of the Division Bench of the High Court and the date of the commencement of the Regulation, there was in operation an order of stay granted by this Court and this enabled the Corporation to exploit the lease of minor forest produce on a monopoly basis. The only question now is whether in view of the Regulation the declaration and the injunction granted by the Division Bench of the High Court can stand. Quite clearly they cannot.

5. Regulation 1 of 1979 is, so the long title says, a regulation to make provision for regulating in the public interest, the trade of certain minor forest produce by creation of a State monopoly in such trade in the Scheduled Areas of the State of Andhra Pradesh.

Section 2(d) defines 'grower' as follows :

(d) 'grower' means

(i) in respect of any minor forest produce grown in any land constituted as reserved forest or any forest or waste land declared as protected forest under the Andhra Pradesh Forest Act, 1967, the Government; and

(ii) in respect of any minor forest produce grown in any other land

(a) the Government, where the minor forest produce is grown on unoccupied land which is the property of the Government or which is placed under their control and management;

(b) the owner, occupier, tenant, lessee or other person having right to the possession and enjoyment of the land, on which the minor produce is grown and includes every person who, from time to time, claims title to such produce through him.

Section 3 empowers the Government to appoint the Corporation as an agent for any Scheduled Area 'for the purposes of purchase of and trade in any minor forest produce on their behalf Section 4 is the pivotal section and is as follows :

4. (1) Upon the issue of a notification under Sub-section (3) of Section 1 in respect of any Scheduled Area, no person other than the Corporation shall sell or purchase or cure or otherwise process or collect or store or transport any minor forest produce to which this regulation applies.

Explanation : Any sale to, or purchase from, the Corporation of a minor forest produce shall not be deemed to be a sale or purchase in contravention of the provisions of this section.

(2) Any person desiring to sell any minor forest produce may sell the produce to the Corporation in such form and in such manner as may be prescribed.

(3) No grower shall carry on,

(a) any trade or business in,

(b) any industry in the case of, the minor forest produce to which this Regulation applies, except in accordance with the provisions of this Regulation or the rules made thereunder.

The other sections are various other machinery provisions, not material for the purposes of this case.

6. We do not have the slightest doubt that the effect of the various provisions of the Regulation is to create a State monopoly in the matter of trade in minor forest produce in Scheduled Areas through the agency of the Corporation. The Corporation alone may buy minor forest produce and no one else. No one can now claim a right to sell the minor forest produce collected by him to whomsoever he likes and no one other than the Corporation may buy such minor forest produce. Therefore both the declaration and the injunction granted by the Division Bench of the High Court must be vacated. The appeal is allowed accordingly. There is no order as to costs.