

(1997) 10 AHC CK 0047

Allahabad High Court

Case No: C.M.W.P. No. 23862 of 1991

Harun and Brothers

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision: Oct. 13, 1997

Acts Referred:

- Forest Act, 1927 - Section 2(4), 41, 42, 51, 76
- Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978 - Rule 3, 5

Citation: (1998) 1 AWC 542

Hon'ble Judges: O.P. Jain, J; D.S. Sinha, J

Bench: Division Bench

Advocate: Ramendra Asthana, for the Appellant;

Final Decision: Dismissed

Judgement

D.S. Sinha, J.

Heard Sri Ramendra Astharta, learned counsel appearing for the petitioner and Sri Vinay Malaviya, learned standing counsel representing the respondents, at length and in detail. 2. M/s. Harun and Brothers. Timber Merchants. Mali Gate. Saharanpur, through its proprietor Mohd. Harun, is engaged in the business of wholesale purchase and sale of timber and firewood and in connection therewith, he has to move the timber and firewood into or from or within the State of Uttar Pradesh. In connection with the said movement by the petitioner, the respondents are insisting that the petitioner should obtain transit pass or pay therefore the prescribed fee. The petitioner feels aggrieved by the demand of the respondents. Hence this petition.

3. From the perusal of the pleadings of the parties, it transpires that the demand of the respondents is in exercise of power conferred by the Uttar Pradesh Transit of Timber and Other Forest Produce Rules, 1978 (hereinafter called the "Rules"), made by the State of Uttar Pradesh in exercise of power conferred upon it under Sections

41 42 51 and 76 of the Indian Forest Act, 1927 (hereinafter called the "Act").

4. Rule 3 of the Rules provides that no forest produce shall be moved into or from or within the State of Uttar Pradesh except as provided in the Rules, without a transit pass in the form prescribed in Schedule "A" of the Rules from an officer of the Forest Department or a person duly authorised by or under the Rules to issue such pass or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass. Proviso to Rule 3 of the Rules stipulates about exemption from the requirement of obtaining transit pass.

5. Rule 5 of the Rules prescribes fees payable for different classes of passes including the transit pass contemplated under Rule 3.

6. The rules do not define the expression "forest produce". Sub-section (4) of Section 2 of the Act defines forest produce. It is not disputed by the learned counsel of the petitioner that the definition of "forest produce" given in subsection (4) of Section 2 of the Act does cover the timber and firewood moved by the petitioner from one destination to another into or from or within the State of Uttar Pradesh. It is also not disputed by the learned counsel for the petitioner that the clauses of the proviso to Rule 3 of the Rules are not attracted to the present case. Under the circumstances, there is no escape from the conclusion that the petitioner is obliged to obtain transit pass required by Rule 3 of the Rules.

7. Rule 5 of the Rules requires the payment of transit fee on the forest produce. In view of the fact that the timber and firewood moved by the petitioner is a forest produce, the petitioner would be liable to pay transit fee under Rule 5 of the Rules.

8. Learned counsel for the petitioner made a feeble attempt to attack the validity of Rule 5. The attack of the learned counsel for the petitioner on the validity of Rule 5 of the Rules cannot be sustained in view of the Division Bench decision of Lucknow Bench of this Court in Sitapur Packing Wood Suppliers etc. etc. v. State of U. P. and others 1987 (13) ALR 328, wherein validity of Rule 5 has already been upheld.

9. On the facts and for the reasons given above, the court is clearly of the opinion that the petition has no merits and deserves to be dismissed.

10. Accordingly, the petition is dismissed. The interim order dated 26th August. 1991, as modified by the order dated 28th January, 1992, shall stand discharged.

11. There is no order as to costs.