

(2011) 11 AHC CK 0284

Allahabad High Court

Case No: Misc. Bench No. 11753 of 2011

M/s Aman Traders Singh
Dharam Kanta Durgapur Road

APPELLANT

Vs

State of U.P. Thr.Prin.Secy.Forest
Bhawan Lko.Thr Its Chief

RESPONDENT

Date of Decision: Nov. 25, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 245(2), 301, 304
- Forest (Conservation) Act, 1980 - Section 2(1)
- Forest Act, 1927 - Section 2(4), 41(1), 41(2), 42, 51
- Uttar Pradesh Tendu Patta (Vyapar Viniyaman) Niyamawali, 1972 - Rule 4

Hon'ble Judges: Ritu Raj Awasthi, J; Devi Prasad Singh, J

Bench: Division Bench

Judgement

1. Heard learned counsel for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel.
2. With the consent of parties' counsel, we dispose of the writ petition at the admission stage.
3. The instant writ petition under Article 226 of the Constitution has been preferred challenging the notification dated 4th of June, 2011 with regard to enhancement of Transit Fee on forest produce.
4. Admittedly, a bunch of writ petitions has been decided by a Division Bench of this Court by judgment and order dated 11.11.2011 in Writ Petition No. 327 (Tax) of 2008; NTPC Limited & another vs. State of UP & others, whereby the impugned notification dated 4th of June, 2011 has been quashed.
5. The operative portion of judgment dated 11.11.2011 is reproduced below:

...187. Our conclusions, on the questions raised before us are as follows:-

(i) The words "forest" and "forest land" are not defined in the Indian Forest Act, 1927 and the Forest Conservation Act, 1980. These words must be understood according to its dictionary meaning. The description will cover all statutory recognised forest whether notified as reserved, protected or village forest or not, for the purposes of Section 2 (1) of the Forest Conservation Act. The principles and criteria of defining forest has to be based on sound ecological and scientific basis. The "forest land" would also include the forest like areas, whether notified or not, for which the Government has taken decision in Government Order dated 20.12.2007 quoted in paragraph 89 of the judgment.

(ii) The definition of "forest produce" is inclusive and not exhaustive. Only those articles and goods, which are defined in Section 2 (4), (a) & (b) of the Indian Forest Act, 1927 are included within the meaning of the words "forest produce". Where a forest produce so defined, changes its essential character either by processing or by manufacturing process into a commercially new article, which is totally different from the forest produce, having a distinct character, known to the business community, with the aid of human skill, it ceases to be forest produce.

(iii) The expression catechu comes within the sweep of cutch and kattha and is included within the meaning of word as forest produce. Sawed timber, fire wood, wood oil, fish, rubber sheets, bamboo mats, furniture, paper and like articles having a distinct character, known to the business community as totally different articles and goods, would cease to be forest produce; for example sponge iron made by manufacturing process from iron ore is not a forest produce. All the minerals from mines and quarries, such as clinker and fly ash, calcium hydroxide, calcium oxide, quick lime, hydrated lime, hard coke, gypsum, rejected coke, ash burn coke and soil (mitti) are forest produce.

(iv) The State has monopolised the entire trade of tendu patta by enacting UP Tendu Patta (Vypyar Viniyaman) Adhiniyam, 1972. The collection, packing, storage and transportation of tendu leaves in the State of U.P. is strictly regulated by U.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1962 and the Rules framed thereunder in which Rule 4 regulates the entire transport of tendu leaves under the prescribed forms. No object is thus sought to be achieved in regulating the transportation of the same forest produce under the Rules of 1978 made by State u/s 41 (1) (c) of the India Forest Act, 1972. The transportation of Tendu Patta within the State of U.P. either brought from outside the State of U.P., within the State of UP, or to be taken out from the State of U.P. is thus not covered and regulated by the provisions of the Rules of 1978.

(v) The State Government has legislative competence u/s 41, 42, 51 and 76 to make rules regulating the transit of forest produce, by providing for transit passes and transit fees u/s 41 (2) (c) of the Indian Forest Act, 1927. The Rules of 1978 are intra

vires the Indian Forest Act, 1972, read with Forest Conservation Act, 1980. There is no repugnancy between the Mines and Minerals Regulation and Development Act, 1957, enacted with reference to Entry 54 of List 1 in Seventh Schedule of the Constitution of India, and the Indian Forest Act, 1927 and the Rules framed therein with reference to Entry 17A of the List 3 of Seventh Schedule of the Constitution of India. The Rules of 1978, are not violative of Art.245 (2) of the Constitution of India, even if they have extra-territorial operations. The Rules of 1978 have been made by the State Government under the Act of Parliament and have close nexus with the residents of the State of U.P. as citizens of India for protection of environment from deforestation, poaching, maintaining ecological balance and to restrict over-exploitation of mineral resources of the State.

(vi) The imposition of transit fee under Rule 5 of the Rules of 1978 is transitory and regulatory in nature. The transit fee is payable on movement of the forest produce within the State of U.P., with the object of protecting environment from deforestation and overexploitation of natural resources including mines and minerals when found in or brought from forest and which not only include notified, protected reserved and village forest but also the forest lands, and forest like areas, whether notified by the State Government or not.

(vii) The levy of transit fee at the rate of Rs.38 per metric tonne per truck, etc. by notification dated 14.6.2004, was declared to be valid in Kumar Stones Works" case (Supra). The levy on such rates is subject to the decision of the Supreme Court in the matters in which judgment in Kumar Stone Works" case has been challenged.

(viii) The increase of transit fee under the Rules of 1978 as notified by the 4th Amendment of the Rules notified on 20.12.2010, on cubic meter of capacity and thereafter by the 5th Amendment to the Rules notified on 4.6.2011 increasing it on ad valorem on the price of forest produce at 5% on the timber of specified trees with minimum of Rs.2000/-; at 15% on the timber of specified trees on ad valorem basis subject to minimum of Rs.750/-, and on all other forest produce coming from mines including coal, lime stone, sand, Bajari and other minerals on the price at the rate of 15% with minimum of Rs.750/- as well, as on cart loads on the same basis subject to minimum of Rs.400/- for timber of specified trees; Rs.200/-, for timber of specified trees and Rs.200/- for forest produce coming from mines as notified in Schedule "C", has changed the character of regulatory fees, to compensatory tax. The State Government has not justified the increase of transit fees as regulatory fees on quid pro quo. The increase of transit fee on ad valorem basis has thus rendered the fees as compensatory tax, for which the State Government has no powers to levy under the Indian Forest Act, 1927.

(ix) The basis of the increase of fees by the 4th Amendment and the 5th Amendment to the Rules of 1978 has not been justified and established, in co-relation with the alleged objects sought to be achieved, namely to maintain ecological balance, as no empirical data with scientific and sociological concerns has been produced before

the Court.

(x) The exorbitant increase of the transit fees by 4th and 5th Amendment to the Rules of 1978, without rendering any services to facilitate the trade, even if the Rules have been framed by the State Government under the Indian Forest Act, 1927, which is Central Act, restrict freedom of trade, commerce and intercourse, and is thus violative of Art.301 of the Constitution of India and which is not saved by Art.304 (b) of the Constitution of India. The increase in transit fee thus cannot be treated to be reasonable restriction on the freedom of trade, commerce and intercourse with or within the State in public interest.

(xi) The State Government while trying to justify the increase of transit fee on cubic feet basis and thereafter on ad valorem basis purportedly to collect the transit fee to meet expenses for enforcement of regulation of movement by issuing transit passes, has not considered and kept in mind the principles of sustainable development, while raising environmental concern. The increase in the transit fee on advelorum basis on timber, coal and other minerals, necessary for raising infrastructure, generating power and manufacture of essential goods will have a direct impact and will impede the development of the State. No scientific study in this regard has been conducted by the State Government, nor any reports placed before the Court to justify the increase of fees, taking into consideration the right to development, which is a fundamental right of the citizens of the State under Art.21 of the Constitution of India.

(xii) The State Government has failed to justify the increase of transit fees on advelorum basis by linking it only with the increased cost of enforcement for collections. The collections will be far and above the cost of enforcement, raising revenue for the State. The imposition will increase the cost of generation of power, and the manufacture of essential goods necessary for creating infrastructure affecting the development of the State.

188. All the writ petitions are consequently allowed. The Notifications dated 20.10.2010, by which the "U.P. Transport of Timber and Other Forest Produce Rules, 1978", was amended by the 4th Amendment; and the Notification dated 4.6.2011, by which the "U.P. Transport of Timber and Other Forest Produce Rules, 1978" was amended by the 5th Amendment, are quashed. It will be open to the respondents to impose and collect the transit fees on such forest produce prevailing on such rates as it was being charged prior to the 4th Amendment to the Rules notified on 20.10.2010, i.e. at the rate of Rs. 38/- per tonne of capacity per lorry load of timber or other forest produce; Rs. 19/- per tonne of capacity per cart load of timber or other forest produce; Rs. 1.25 per camel load of timber and other forest produce; Rs. 4/- per per pony load of timber or other forest produce and Rs. 2/- per head load of timber or other forest produce. We also declare that the imposition of transit fee on "Sponge Iron" which is not a forest produce after undergoing the process of manufacture, converting it into a commercially different commodity than forest

produce, and "Tendu Patta", the trade and transportation of which is monopolised by the State Government, is not valid in law, and restrain respondents from requiring transit passes and transit fees on it. The costs are made easy.

6. In view of the settled proposition of law, no fruitful purpose would be served in keeping the writ petition pending.

7. Accordingly, we dispose of the writ petition finally in terms of the aforesaid judgment and order dated 11.11.2011. No cost.