

(2000) 02 PAT CK 0101

Patna High Court

Case No: Civil W. Jursd. Case No's. 3384 of 1992 and 1879 of 1998

Sarup Singh and Company and
Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Feb. 23, 2000

Acts Referred:

- Bihar Forest Produce (Regulation of Trade) Act, 1984 - Section 2(4), 34, 5
- Bihar Timber and Others Forest Produce (Transit Regulation) Rules, 1973 - Rule 1

Citation: AIR 2001 Patna 36 : (2000) 2 PLJR 296

Hon'ble Judges: Sachchidanand Jha, J

Bench: Single Bench

Advocate: M.M. Banerjee and J.K. Pasari, for the Appellant; Arvind Kumar Mehta and Rajesh Kumar, JCs to G.P.I., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. These two writ petitions have been heard together as the dispute involved in both of them is the same.

2. There are seventeen petitioners in all. five of whom are common. In CWJC No. 3384 of 1992 (R), the petitioners' case is that they deal in bailies, rollas, Cogging Slipers etc. of eucalyptus, a kind of tree known in local parlance as "Safeda". They bring the timber from Haryana where it is grown by the farmers on their lands. It is said that eucalyptus is treated as an "agricultural produce" in that State and there is no restriction on its export etc. there. However, when the timber is brought into the State of Bihar, the consignment is detained by the forest officials on the ground that it is not accompanied by transit permit. The contention of the petitioners is that the provisions of the Bihar Timber and other Forest Produce (Regulation of Transportation) Rules 1973 (hereinafter referred to as "the Transit Rules") which

provide for transit permits, are not applicable to import of timber from another State. It is also contended that by reason of the deletion of eucalyptus from the Schedule, the regulatory provisions of Bihar Forest Produce (Regulation of Trade) Act, 1984 (hereinafter referred to as "the Trade Regulation Act") are also not applicable to it. The officials of the Forest Department therefore, cannot insist on taking transit permit for movement of eucalyptus from one place to another even within the State. More or less a similar case is pleaded in CWJC No. 1879/ 98(R). The Petitioners claim to bring eucalyptus also from the State of West Bengal besides Haryana, and it is said that they supply such imported eucalyptus in the form of bailies, rollas, Cogging Slipers etc., to Tisco and other concerns including the Government Companies.

3. Shri M.M. Banerjee, learned counsel for the petitioners submitted that there is no restriction now on trade in eucalyptus by virtue of notification No. SO 628 dated 10-9-90, and the authority therefore, cannot insist upon taking transit permits. In any case, the provisions of the Transit Rules under which transit permits are issued apply to trade within the State, and therefore, eucalyptus imported from other States cannot be subjected to transit permits.

4. Though the case has been argued within the framework of the Transit Rules, it is the Trade Regulation Act which provides the answer to the submission.

5. The Trade Regulation Act has been enacted to regulate, in public interest, the trade and other related matters with respect to specified forest produce. Section 5, which contains the charging provisions, runs as follows :--

"5. Restriction on purchase or transport of specified forest produce.-- (1) On the issue of a notification under Sub-sections (3) and (4) of Section 1 with respect to any area, no person other than --

(i) The Government;

(ii) An Officer of the Government authorised in writing in this behalf;

(iii) An agent in respect of the unit in which the specified forest produce is grown or found;

shall purchase or transport or import or export such specified forest produce in and from such area.

Explanation I.-- Purchase of specified forest produce from the State Government or the aforesaid Government Officer or agent or a licensed vendor shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation II.-- A person having no interest in the holding who has acquired the right to collect the specified forest produce grown or found on land shall be deemed to have purchased such produce in contravention of the provisions of this Act."

The Act, it would appear, prohibits any kind of trade by a private person and thus creates State monopoly in specified forest produce. This is subject to certain exceptions mentioned in Sub-section (2) of Section 5 which it is not necessary to notice for the purpose of this case.

6. Section 2(4) of the Trade Regulation Act defines "forest produce" to mean any forest produce as specified in the schedule. As many as 32 items of forest produce have been specified in the schedule. The list includes eucalyptus at serial No. IX. Eucalyptus is thus a specified forest produce and the private trading therein is prohibited.

7. The petitioners rely on the notification of the Forest Department, SO 628 dated 10-9-90, but I am afraid, the said notification can be of little avail to them. Section 34 of the Trade Regulation Act inter alia, provides for exclusion of any forest produce specified in the Schedule and it was in exercise of powers under that Section that eucalyptus was omitted from the schedule but from bare reading of the notification it is clear that the exclusion is not in absolute terms. It applies only to private lands. The notification may be noticed at this stage as follows :

"The 10th September, 1990. S.O. 628 -- in exercise of the powers conferred u/s 34 of the Bihar Forest Produce (Regulation and Trade) Act, 1984 (Bihar Act 12. 1984) the Governor of Bihar, in order to mitigate the difficulties faced by the farmers of the State of Bihar in marketing of Eucalyptus trees grown on their own land under social forestry and providing facilities for free trade of Eucalyptus, is pleased to omit the operation of Clause (ix) of Schedule of the Act in public interest regarding Eucalyptus trees grown on the land owned by the farmers for their marketing in the State of Bihar from the date of notification.

This order shall not be operative on Eucalyptus trees grown on Government forest land or any other Government land.

(sa-va-39/90)

By order of the Governor of Bihar

K.A.H. Subramanian,

Secretary to Government.

8. Though omitted from the schedule which means that the rigours of Section 5 of the Trade Regulation Act are not applicable and a person can market eucalyptus grown on his own private land, it does not mean that Transit rules would not apply. The Transit Rules have been framed to prevent illicit trade in forest produce and, in any view, the notification is for the benefits of the farmers and not for the benefit of traders like the petitioners. Explanation-II appended to Sub-section (1) of Section 5 makes it clear that where a person acquires right to collect specified forest produce grown or found on land in which he has no interest, he shall be deemed to have purchased such produce in contravention of the provisions of the Act. As a matter of fact, the petitioners do not claim to be farmers or to have grown eucalyptus on the

lands themselves. Admittedly they pro-cure eucalyptus from external sources.

9. It may be mentioned here that so far as farmers are concerned, u/s 5(3) of the Trade Regulation Act, they are entitled to sale any specified forest produce (grown on their own land) to the authorised Government Officer or Agent, mentioned in Section 5(1), at any depot within the unit. Section 9 of the Act makes it obligatory for the authorised Officer or Agent to purchase the specified forest produce offered for sale at the depot at the price fixed u/s 7. Therefore, so far as the farmers are concerned, the Trade Regulation Act contain sufficient safeguards to protect their right and interest in the forest produce grown on their own lands.

10. The objects underlying the transit permits however, are different. The requirement of application for grant of transit permit and issuance of such permit provides an opportunity to the Officers of Forest Department to prevent illicit trading in trees and other forest produce.

11. It is contended that as the petitioners import eucalyptus from another State, they are not exposed to the Transit Rules, which, according to the petitioners, apply to only intra State Transportation. It is submitted that the Transit Rules do not provide any machinery for issuance of transit permits at the State borders and, in the circumstances, timber brought from another State is subjected to unnecessary harassment. It do not find any substance in the submissions. It may be that there are no check-points at the State borders where transit permits may be issued but I fail to understand why such transit permits cannot be obtained with respect to the import of timber from before. According to the counsel, as is evident from the preamble of the Transit Rules, they apply to movement within the State and therefore, the term "import" in Rule 3 of the Rules, cannot be interpreted as import from another State. The term, according to me, cannot be given restricted meaning, as suggested by the counsel, Rule 3 refers to import, export as well as removal. If the term "import" is understood in the sense of movement from one place to another within the State, the word "remove" would cover such movement and render the word "import or export" surplusage. The modes of transport of timber, envisaged in the Transit Rules, include Roadways, Railways, Waterways as well as Airways. I have, therefore, no difficulty in coming to the conclusion that in the context of the Transit Rules, the words "import" or "export" have to be understood as import from and export to other States. In my opinion, the Trade Regulation Act and the Transit Rules have to be read in tandem. While the Trade Regulation Act completely prohibits trade in any form in respect of indigenous specified forest produce within the State of Bihar, the Transit Rules intend to regulate the movement of transportation of all kinds of timber and forest produce within the State of Bihar. Once timber is brought from another State to the State of Bihar or it passes through a State, the Transit Rules would be applicable. Without transit permits no movement or transportation of timber and other produce, would be permissible. In the above view of the matter, I do not find any merit in the grievance

of the petitioners.

12. For the reasons stated above, these writ petitions are dismissed, but without any order as to costs.