

(1990) 06 CAL CK 0021

Calcutta High Court

Case No: C.O. No. 5813 (W) of 1990 and Matter No. 293 of 1990

Woodcrafts Products Ltd. and
Another

APPELLANT

Vs

Union of India and Others

Century Plyboards India Ltd. Vs
The Director, Plant Protection
Quarantine and Storage and
Others

RESPONDENT

Date of Decision: June 19, 1990

Acts Referred:

- Constitution of India, 1950 - Article 265
- Destructive Insects And Pests Act, 1914 - Section 2(a), 3, 3(1), 5
- Registration Act, 1908 - Section 2(6)
- Transfer of Property Act, 1882 - Section 3

Citation: 95 CWN 343

Hon'ble Judges: A. M. Bhattacharjee, J

Bench: Single Bench

Advocate: Bhaskar Gupta and A. Chatterjee, for the Appellant; L.K. Chatterjee, Chandrima Bhattacharjee and S.K. Roy Chowdhury, for the Respondent

Judgement

A.M. Bhattacharjee, J.

These two Writ Petitions, heard together and disposed of by this common judgment, have mainly raised the question as to whether timber-logs are covered by the provisions of the Plants, Fruits and Seeds (Regulation of Import Into India) Order, 1989, hereinafter referred to as "the Order", made by the Central Government in exercise of the powers conferred by Section 3(1) of the Destructive Insects and Pests Act, 1914, hereinafter referred to as the Act. The object of the Act, as apparent, from the Preamble and the Long Title, is "to make provisions for preventing the introduction into India of any insect, fungus or other pest, which is or may be

destructive to crops" and the expression "crops" has been defined in Section 2(a) of the Act to include "all agricultural or horticultural crops" and all trees, bushes or plants".

2. Section 3(1), whereunder the Order of 1989 has been issued, clearly empowers the Central Government, "by notification in the Gazette of India," "to prohibit or regulate, subject to such restrictions and conditions as the Central Government may impose, the import into India. of any articles or class of articles likely to cause Infection to any crop. The expression articles used in Section 3(1), being a word of wide amplitude, would obviously include timber-logs also, and, therefore, a Notification u/s 3(1) imposing restrictions and conditions, on import, may be made applicable to timber-logs. But both Mr. Gupta and Mr. Pal., the Learned Counsel appearing for the petitioners have very strongly urged that the Order in question, as framed, does not and cannot apply to timber-logs. Not that no Order can be made u/s 3(1) of the Act in respect of timber-logs, but that no such Order has in fact been made and, in particular, the Order of 1989, on its terms, cannot apply to timber-logs.

3. As the Short Title, the definition clause being Clause 2, and the various Statutory Forms for Application and Permit, being Forms "A", "B", "C", "D", "F", "G", would go to show that the Order is intended to cover Plants, Seeds, Fruits and Soil/Peat. Obviously timber-logs are not Fruits or Seeds or Soil and, therefore, they can be brought within the operation of the Order only if they are Plants as defined in Clause 2(i) of the Order, which reads thus : -

Plants means any plant or part thereof, whether living or dead, trees, shrubs, nursery stock, and includes all vegetatively propagated materials.

One, if he is in doubt, has only to consult any standard lexicon to appreciate that all trees are plant and while other plants may be annual or seasonal in nature, bushy type or creeping on the ground, trees are those plants which are perennial in nature with single woody self-supporting stem or trunk usually unbranched for some distance above ground. Therefore, the definition of Plant in clause 2(i) of the Order to mean trees also is nothing unusual.

4. But the main brunt of the argument advanced by Mr. Gupta as well as Mr. Pal is that while the words "whether living or dead" have been used in the definition with reference to Plants only, the word "trees" is patently unqualified and must therefore mean living trees only and not dead trees and timber-logs, even if trees, are dead trees.

5. This argument involves a fallacy which would be apparent once we examine the definition of the word "Plant" as extracted hereinbefore. Trees are plants, both lexically as well as according to the aforesaid definition. That definition makes it expressly clear that part of a plant is also a plant. So if part of a tree is cut and becomes a timber-log, it is still a plant, even though dead. The Act and the Order seek to regulate imported or transported, unless it is uprooted or otherwise severed

from the stamps, in which case it cannot but become dead tree. Even if branches or other parts of the tree are severed from the trunk and are imported or transported as timber-logs, they do not cease to be parts of a tree. The definition in clause 2(i), extracted hereinabove, has taken sufficient care to note that part of a plant is also a plant, whether living or dead and that tree is plant. A fortiori, therefore, part of a tree, whether a timber-log or otherwise, is also a tree, whether living or dead.

6. Mr. Pal has drawn my attention to the meaning of the word "Log" in Words and Phrases (Volume 25A, page 307) where it has been stated that Log "means the trunk of a tree cut down and stripped of its branches" Logs "are the stems or trunks of trees cut into convenient lengths". All these would rather go to fortify the conclusion that timber-log is nevertheless tree, though may not be living or may not be the whole of it.

7. The long course of Legislations in our country would also go to show that the expression timber has very often been used to denote tree and both Section 3 of the Transfer of Property Act, 1882 and Section 2(6) of the Registration Act, 1908, while purporting to exclude standing trees from the ambit of the expression "immoveable property", have used the expression "standing timber". I am, therefore, inclined to hold that timber-logs are nevertheless trees and, therefore, are plants within the meaning of clause 2(i) of the Order of 1989.

8. Mr. Gupta has also urged that under Clause 3(10) of the Order, "consignments for import should be packed in the packaging material as envisaged in Clause 2(g)" and under clause 2(g), "packing material" means "the packing material consisting of saw dust, wood shavings, waste paper and synthetic material used for packing of plants, fruits or seeds". Mr. Gupta has argued that the very fact that timber-logs can not be packed in that manner as required under clause 3(10) read with clause 2(g) would clearly indicate that timber-logs are not within the contemplation of the Order. I have no doubt that whether timber-logs are "Plants" within the meaning of the Order would depend on the definition of the word plant" in clause 2(i) of the Order and if they are, and as already indicated that in my view they are, plants as defined in clause 2(i), they can not cease to be so and go out of the operation of the Order simply because the packing materials in which all consignments should be packed may not fit in with timber-logs.

9. It has also been contended by the Learned Counsel for the Petitioners that the Statutory Forms appended to the Order for Application for Permit, being Forms A and B and also the Permits, being Forms C and D, only refer to Plants for consumption or for sowing/ planting and timber-logs are neither intended for sowing/ planting, nor for consumption. It has, therefore, been argued that, even assuming timber-logs to be Plants, the provisions of the Order cannot apply to them as they can be used neither for sowing/planting, nor for consumption. I do not know why. We do not consume food or drinks only. We also consume, say, electricity, coal, fire-wood also; do we not? Timber-logs are therefore very much materials for

consumption also.

10. Mr. Gupta and also Mr. Pal have been argued that even though the Act has empowered the Central Government to prohibit or regulate import of articles or insects and to impose such restrictions and conditions as may be necessary to effectuate such prohibition or regulation, the power to make "rules for the detention, inspection, disinfection or destruction" of such articles or insects has been specifically given by section 5 of the Act to State Government. The Learned Counsel have, therefore, contended that the provisions in the Central Government Order of 1989 providing for such detention, inspection, fumigation, disinfestation or destruction and the fees payable therefor are ultra vires the powers of the Central Government u/s 3 of the Act, being within the exclusive jurisdiction of the State Government u/s 5 of the Act. It has accordingly been argued that the actions of the Central Government in detaining the timber logs for inspection, fumigation and all that were illegal and unauthorised.

11. I have not been able to accept this contention. There can be no doubt that the wide amplitude of powers vested in the Central Government u/s 3 of the Act to prohibit and regulate and to impose all restrictions and conditions as may be necessary to effectively exercise such power to prohibit and regulate, would, as a matter of course, include the powers to provide for detention, inspection, disinfection or destruction. The mere fact that the State Government has also been empowered to make Rules to provide for those purposes cannot go to indicate that the power of the Central Government to provide for such actions has stood abrogated.. When the same donor of power confers all necessary powers on one authority and. then, by the same instrument, confers some of those powers on another authority also, the powers conferred on the, latter authority may very often be additional powers only and not in substitution of the powers granted to the former authority. The conferment of jurisdiction on the State Legislatures also to legislate on matters in the Concurrent List of the Constitution does not, as it cannot, mean that the jurisdiction of Parliament to legislate over the same matters has been taken away or circumscribed. The question as to which legislation would prevail would, however, become relevant and pertinent, only when both the authorities exercise the jurisdiction. But in the case before us, Mr. Chatterjee, the Learned Counsel for the Respondents, has pointed out that no Rules have at all been framed by the State Government u/s 5 of the act and that being so, this question need not detain me. But I would only add, in view of the strenuous argument advanced by the Learned Counsel for both the sides, that if it were necessary to decide the question, I would have held that the Rules by the State Government u/s 5 of the Act would have supplemented the related provisions of the Order of 1989, But could not supplement them and the former was to be read subject to the provisions of the latter.

12. The last contention made both by Mr. Gupta and by Mr. Pal on behalf of the Petitioners now remains to be considered and that, in my view, appears to be a formidable one. The contention is that the order of 1989 specifically provides for the payment of certain Fees under clause 3(12), clause 12 etc. The parent act, being the Destructive Insects and Pests act of 1914 nowhere empowers either the Central Government or the State Government or any other authority to impose any such Fees. It is now well settled that though there are well-settled distinctions between an impost which can be termed as Tax and an impost which can be termed as Fee, there is no generic difference between a Tax and a Fee and both are different forms in which the taxing power of a State manifests itself. Reference in this connection may be made to the unanimous five-Judge Bench decision of the Supreme Court in [Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another](#), at 403), which, in its turn, has relied on the celebrated seven-Judge Bench decision of the Supreme Court in [The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.](#) It "is also equally well settled that no impost, whether in the nature of a Tax or Fee or otherwise, can be imposed by any delegated or subordinate legislation, unless the primary legislation, under which the delegated or subordinate legislation in the shape of Rule or Regulation or Bye-law is made, specifically authorises such imposition. Article 265 of the Constitution providing that "no tax shall be levied or collected except by authority of law" applies to every manifestation of the taxing power, whether in the nature of Tax stricto sensu or Fee and a delegated or subordinate legislation is no "law" within the meaning of Article 265 unless the primary legislation specifically authorises such imposition. That being so, the imposition of the Fees under the Order of 1989 for inspection, fumigation, disinfestation or disinfection or otherwise cannot be sustained in the absence of any authorisation to that effect in the parent Act. of 1914. The imposition of any such Fees by the Order of 1989 is. therefore clearly ultra vires the powers of the Central Government under the provision of the Act of 1914 and a Writ must therefore issue commanding and directing the respondents to forbear from levying any such Fees and also directing the respondents to refund to the petitioners all such Fees, if any, collected from the petitioners in purported exercise of the powers under any of the provisions of the Order of 1989.

13. During the course of the hearing, Mr. Chatterjee, the Learned Counsel for the Respondents, pointed out that the Supreme Court has already held in a case that timber-logs are Plants for the purpose of the Order of 1989 and he has thereafter produced a copy of that Order of a two-Judge Bench of the Supreme Court in *Sarda Plywood Ltd. vs. Union of India* (SLP - Civil No. 1277 of 1990 and IA NO. 3 of 1990, decided on 9th April, 1990). It is true that the two-Judge Bench has ruled, while dismissing the Special leave Petition, that "the timber-logs of the kind concerned in the present case fall within this definition" of Plant in the Order of 1989. It is not quite clear as to whether the Supreme Court intended to confine its decision to "the

timber-logs of the kind concerned" in that case. But since I have, for the reasons stated hereinbefore, come to the conclusion that timber- logs are Plants within the meaning of the Order of 1989, that question need not detain me.

14. But the question as to whether any Fees could at all be imposed under the Order of 1989, in the absence of any specific authorisation to that effect in the Act of 1914, whereunder the Order of 1989 has been made, was not at all raised and decided by the Supreme Court. It, however, appears that some challenge to the legality of the Fees on the ground of its being "disproportionately high" and all that was made, but the Supreme Court has expressly left that question open and undecided. As already noted, the Writ Petitions succeed and writs and directions as noted in the concluding portion of, the paragraph immediately preceding shall issue. No order as to costs.