

STATE OF U.P. AND ORS.

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v.

M/S. SITAPUR PACKING WOOD SUPPLIERS ETC.

APRIL 23, 2002

[Y.K. SABHARWAL AND K.G. BALAKRISHNAN, JJ.]

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U.P. Transit of Timber and Other Forest Produce Rules, 1978—Rule 5—Transit fee on forest produce—Levy of—Validity— in the instant case, High Court holding transit fee invalid in absence of quid pro quo—On appeal held, transit fee being regulatory and not compensatory, it is not necessary to establish factum of rendering of service—Thus cannot be invalidated on the ground that quid pro quo has not been established—Indian Forest Act, 1927.

C

Writ Petitions were filed before the High Court challenging the validity of levy of transit fee on the forest produce under Rule 5 of U.P. Transit of Timber and Other Forest Produce Rules, 1978. High Court held the Rule to be constitutionally valid but invalidated the levy of transit fee in absence of quid pro quo. Hence the present appeals.

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Allowing the appeals, the Court

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HELD : It is clear from the provisions of the Indian Forest Act, 1927 and U.P. Transit of Timber and Other Forest Produce Rules, 1978 that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established and was not necessary for the State to establish quid pro quo. [350-F; 351-C]

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State of Tripura and Ors. v. Sudhir Ranjiah Nath, [1997] 3 SCC 665; Corporation of Calcutta and Anr. v. Liberty Cinema, [1965] 2 SCR 477; Secunderabad Hyderabad Hotel Owners' Association and Ors. v. Hyderabad Municipal Corporation, Hyderabad and Anr., [1999] 2 SCC 274 and P. Kannadasan and Ors. v. State of T.N. and Ors., [1996] 5 SCC 670, referred to.

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A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3974-4051 of 1986.

From the Judgment and Order dated 16.5.1986 of the Allahabad High Court in W.P. Nos. 901/84, 6168/83, 1411, 1585, 1602, 2027, 2369, 2398, 2419, 2492, 2538, 2647, 2655, 2665, 3369, 3776, 4169, 4357, 4459, 4535, 4627, 4628, 4629, 4633, 4820, 4941, 4942, 4974, 5006, 5007, 5021, 5151, 5307, 5309, 5345, 5381, 5382, 5384, 5437, 5459, 5527, 5601, 5720, 5773, 5833, 5921, 6068/84, 133, 341, 356, 637, 785, 850, 1190, 1257, 1709, 1860, 1920, 1991, 2144, 2267, 2681, 3924, 3927, 4013, 4192, 5721, 6659/85, 49, 142, 159, 205, 370, 371, 372, 374, 1013, and 2208 of 1986.

C WITH

C.A. Nos. 2891, 2876, 2877-2886, 2887, 2888, 2889, 2890, 2874 of 2002, 36/45/95, 5376/98 and 2699 of 1999.

D Dinesh Dwivedi, R.C. Verma, (NP), Ajay K. Agrawal, Irshad Ahmad (NP), G.G. Upadhyay for R.D. Upadhyay, Manoj Swarup, Ms. Lalita Kohli, A.P. Mohanty (NP), Shakil Ahmed Syed (NP), Anis Ahmed Khan (NP) for the appearing parties.

The Judgment of the Court was delivered by

E **Y.K. SABHARWAL, J.** Delay condoned.

Special leave granted.

F The only question that is required to be determined in these appeals is about the validity of the levy of transit fee under Rule 5 of U.P. Transit of Timber and Other Forest Produce Rules, 1978 (for short 'the Rules'). The High Court has held the Rule to be constitutionally valid but levy of transit fee has been invalidated in absence of quid pro quo. The Rule has not been struck down as in the view of the High Court it is open to the State Government to support the levy of transit fee by rendering service as quid pro quo. This aspect alone is under challenge in these appeals filed by the State Government **G** aggrieved by the conclusion of the High Court that the levy of transit fee is invalid.

The Rules have been framed in exercise of the powers under Sections 41, 42, 51 and 76 of the Indian Forest Act, 1927. Rule 3 provides for regulation **H** of transit of forest produce by means of passes. It places restrictions on

movement of forest produce without transit pass into or from or within the State of U.P. The imposition of fee is provided in Rule 5. Rule 14 provides for affixing of transit marks to timber. Rules 3, 5 and 14 read as under: A

“3. *Regulation of transit of forest produce by means of passes.*-No forest produce shall be moved into or from or within the State of Uttar Pradesh except as hereinafter provided, without a transit pass in the form in Sch. A to these rules, from an officer of the Forest Department or a person duly authorized by or under these 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 : B C

Provided that no transit pass shall be required for the removal -

- (a) of any forest produce which is being removed for *bona fide* consumption by any person in exercise of a privilege granted in this behalf by the State Government or of a right recognized under the Act, within the limits of a village in which it is produced; D
- (b) of forest produce by contractors' agency from the forests managed by the Forest Department, in which case the movement shall be regulated by the relevant conditions of sale and terms of the corresponding agreement deed executed by the buyer; E
- (c) of such forest produce as may be exempted by the State Government from the operation of these rules by notification in the official Gazette.

5. *Fees payable for different classes of passes.*—At the check Chowki or depot established under rule 15 and specified under proviso (ii) to Clause (b), sub-rule (1) of rule 4, the forest produce along with the two copies of the pass (duplicate and triplicate) shall be produced for examination under sub-rule (4) of rule 6 and for payment of transit fee on the forest produce calculated at the following rates; corresponding receipt shall be granted in the form given in Schedule C— F G

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| (i) per lorry of timber or other forest produce | ... Rs.5.00 per tonne of capacity | |
| (ii) per cart load of timber or other forest produce | ... 2.50 | H |

- A (iii) per camel load of timber or
other forest produce ... 1.25
- (iv) per pony load of timber or other
forest produce ... 0.50
- B (v) per head of timber or the forest produce ... 0.25

Note-In respect of resin and resin products, the provisions of the Uttar Pradesh Resin and Other Forest Produce (Regulation of Trade) Act, 1976 and the rules framed thereunder, shall apply.

C **14. Property and transit marks to be affixed to timber.**-Except when it is the property of Government, all timber brought at the specified check Chowki or depot shall be examined and imprinted with a Government hammer mark (the facsimile of which shall be imprinted on the connected pass) the design of such a hammer mark shall, from time to time, be prescribed by the Conservator of forest or the Divisional Forest Officer. In addition, if the Conservator of Forests or the Divisional Forest Officer so directs, a distinguishable private property mark of the owner of such timber of the description which has been registered in the office of the Conservator of Forests of the Circle, or the Divisional Forest Officer, shall also be affixed.”

E Section 41 of the Act empowers the State Government to make rules to regulate the transit of timber and other forest produce. The said Section 41 reads as under:

“41. Power to make rules to regulate transit of forest-produce.-

F (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

G (2) In particular and without prejudice to the generality of the foregoing powers such rules may-

- (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;
- H (b) prohibit the import or export or moving of such timber or other

- produce without a pass from an officer duly authorized to issue the same or otherwise than in accordance with the conditions of such pass; A
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark; B C
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in-charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots; D
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed; E
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same; F
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber; G
- (i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration. H

A (3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.”

B While dealing with the question of the constitutional competence of the State Government to impose transit fee the High Court, in the judgment under appeal, held that Entry 17A of List III of the Seventh Schedule of the Constitution of India would include the power to regulate transit of forest produce and the regulatory measure could include the power to regulate market fee. The High Court concluded that the power to regulate the transit of timber under the Act and the Rules and for that purpose to levy fee, therefore, is not confined to the transit of timber or forest produce by the owner thereof; it would also extend to those traders who arrange to transport it for any reason. The transit fee was held to fall within the general power of control over transit under Section 41(2) of the Act.

D Having found that the constitutional competence in providing fee as set out in Rule 5 is not lacking, the High Court accepted the challenge to the validity of levy on the ground that the fee is not supported by the principle of quid pro quo. It held that no service is provided in lieu of the fee to any person much less to the person from whom the transit fee is charged. In the view of the High Court, reasonable relationship between the levy of the fee and the services rendered had not been established.

E The distinction between tax and fee is well settled and need not be restated herein. It is clear from the aforementioned provisions of the Act and the Rules that the transitory fee is regulatory in nature. The question of quid pro quo is necessary when a fee is compensatory. It is well established that for every fee quid pro quo is not necessary. The transit fee being regulatory, it is not necessary to establish the factum of rendering of service. Thus, there is no question of a levy of transit fee being invalidated on the ground that quid pro quo has not been established.

F In *State of Tripura and Ors. v. Sudhir Ranjan Nath*, [1997] 3 SCC 665 almost similar question came up for consideration in relation to State of Tripura. It was held that Sections 41 and 76 of the Act vest total control over the forest produce in the State Government and empower it to regulate the transit of all timber or other forest produce for which purpose the State Government is also empowered to make the Rules. The decision of the High Court invalidating the levy of application fee in the said case on the ground that the State had not established that the services were rendered in lieu of

the said fee, was reversed by this Court holding that the fee was regulatory and not compensatory. Reference may be made to the decision in the case of *Corporation of Calcutta and Anr. v. Liberty Cinema*, [1965] 2 SCR 477 wherein it was held that the expression licence fee does not necessarily mean a fee in lieu of services and in case of regulatory fee no quid pro quo need be established. Following *Liberty Cinema's* case similar views have been expressed in *Secundrabad Hyderabad Hotel Owners' Association and Ors. v. Hyderabad Municipal Corporation, Hyderabad and Anr.*, [1999] 2 SCC 274 and *P. Kannadasan and Ors. v. State of T.N. and Ors.*, [1996] 5 SCC 670.

The transit fee under Rule 5 is clearly regulatory and, thus, it was not necessary for the State to establish quid pro quo. The High Court was in error in holding that transit fee is invalid in absence of quid pro quo. As a consequence the penalty would also be valid. The penalty was held to be invalid by the High Court in view of its conclusion about the invalidity of the transit fee. The penalty, however, cannot be beyond what is permissible in the Act. That aspect, however, is not under challenge in these appeals as the State Government after the impugned judgment of the High Court realizing its mistake amended the Rule so as to bring the provision of penalty in accord with the provisions of the Act.

For the aforesaid reasons, we allow these appeals and hold that the levy of the transit fee is valid and the judgment of the High Court is accordingly set aside. The parties are, however, left to bear their own costs.

N.J.

Appeals allowed.