(2014) 09 UK CK 0017

In the Uttarakhand High Court

Case No : Writ Petition No. 685 of 2014 (M/S)

Bazpur Stone Crusher Pvt. Ltd.	APPELLANT
Vs	
State of Uttarakhand and Others	RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:
Forest Act, 1927 — Section 2, 2(4)

Citation : AIR 2015 UC 88

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : S.R.S. Gill, for the Appellant; R.C. Arya, Standing Counsel and Virendra Kaparwan, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.?Learned counsel for the parties have agreed to argue this petition today itself. I.A. No. 3697 of 2014 stands disposed of accordingly. Mr. S.R.S. Gill, learned counsel for the petitioner, does not want to press relief Nos. 1, 3, 4 and 5, therefore, writ petition is dismissed for relief Nos. 1, 3, 4 & 5 as not pressed.

2. Mr. S.R.S. Gill, learned counsel for the petitioner, submits that Uttarakhand Forest Corporation cannot recover any transit fee under any provision of Uttarakhand Transit of Timber Forest Produce Rules, 2012 for transportation of the boulders, sand and bajri taken out from the private revenue land.

3. This Court in the case of Jaiprakash Associates Ltd. Vs. Tehri Hydro Development, , has held as under:

"5. Section 2(4) of the Indian Forest Act defines the "forest produce", which reads as under:-

"forest produce" includes-

(a) the following whether found in, or brought from, a forest or not, that is to say-timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrobalans, and

(b) the following when found in, or brought from a forest, that is to say--

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface oil, rock and mineral (including lime-stone, laterite, mineral oils, and all products of mines or quarries);

(4-A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court;"

6. Having read sub-section (4) of Section 2 of the Indian Forest Act, I have absolutely no hesitation to hold that timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrobalans, shall always be treated as forest produce, irrespective of the fact that these products were found in and brought from any forest area or not. While the products as mentioned in sub-section (b) of sub-section (4) of Section 2 of the Act, if found in, or brought from the forest area then only shall be treated as forest produce. In other words, material mentioned in sub-section (b) of sub-section (4) of Section 2 of the Act, if found beyond the forest area and not brought from the forest area, shall not be treated as forest produce.

7. Undisputedly, State Government is competent to levy and recover the transit fee on the forest produce."

4. Respondent No. 2 i.e. Divisional Forest Officer, in paragraph No. 9 of his counter-affidavit, has stated as under:

"9. That contents of para 10 of the writ petition are matter of record, hence accepted. No transit fee is levied on any raw material i.e. boulders, sand and bajri brought from revenue land which does not come under forest area."

5. Mr. R.C. Arya, learned Standing Counsel appearing for respondent Nos. 1 & 2 and Mr. Virendra Kaparwan, learned counsel appearing for respondent No. 3, fairly submitted that transit fee can be levied and recovered on the forest produced, as mentioned in clause (a) of Section 2(4) of the Indian Forest Act, irrespective of the fact that same are found in and brought from any forest area or not; however, produce as mentioned in clause (b) of Section 2(4) of the Act can be subjected to transit fee only when they are brought from the forest area; however, if produce mentioned in clause (b) of Section 2(4) of the Act are found beyond the forest area and not brought from the forest area, same shall not be treated as forest produce and cannot be made subject-matter of transit fee.

6. In view of the above, present writ petition succeeds for relief No. 2 as claimed in the writ petition.

7. Consequently, writ of mandamus is issued to the respondents not to levy and recover the transit fee for the produce mentioned in clause (b) of Section 2(4) of the Indian Forest Act, if same are taken from the areas beyond the forest area and not brought from the forest area. No order as to costs.

CLMA No. 2903 of 2014 also stands disposed of accordingly.

