

(2008) 09 OHC CK 0097
In the Orissa High Court

Chittaranjan Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Citation : (2008) 106 CLT 637 : (2008) 2 OLR 1076 Supp

Hon'ble Judges : P.K. Tripathy, J;A.K. Parichha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Petitioners in both the Writ Petitions, who are traders of plates, trays and cups made out of sal leaves, have challenged the legality and validity of the Resolution No. 5 F-C 74/99-16744/F & E dated 27th September, 2002 issued by the Government of Orissa as at Annxure-2.

Petitioners' case in both the Writ Petitions is that leaf plates, trays and cups are manufactured from sal leaves and siali leaves collected from forest by use of manual as well as mechanical process using the supporting materials like thread, polythene sheet, pasting glue etc.

They claim that the end product no more remains a forest produce and, therefore, the resolution/notification as at Annexure-2 compelling the traders to obtain transit permit for transportation of such plates, trays and cups is illegal.

In the counter to the above noted plea of the Petitioners, the Opposite Parties state that by use manual and mechanical process, the sal leaves are given the shape of plates, trays and cups, but such articles do not lose their identity as forest produce because once such plates, trays and cups are dismantled, they again become sal leaves. The Opposite Parties thus, maintain that the leaf plates, trays and cups are forest produce and so their transportation need transit permit.

2. Mr S.K. Das and Mr. D.P. Dhal, Learned Counsels for the Petitioners state that complex manual and mechanical process are involved in converting the sal

leaves and siali leaves into plates, trays and cups and in the process of such manufacture alien articles like polythene, stitching materials, pasting materials etc. are used and, therefore, such plates, trays, cups no more remain forest produce. According to them, once the end product does not remain a forest produce, transit permit for its transportation is not necessary. In support of their contention Learned Counsels relied on the cases of *Tej Bahadu Dube (Dead) by Lrs. v. Forest Range Officer F.S. (S.W.)*, Hyderabad JT 2002 (2) 171 and *Suresh Lohiya v. State of Maharashtra and Anr.* 1996 (3) Cri 149 (SC).

3. Learned Counsel for the State reiterates the stand taken in the counter and relies on the cases of *Gangadhar Sahoo v. State of Orissa* in OJC No. 1162 of 1990 of this Court and *Crane Betel Nut Powder Works v. Commissioner of Customs and Central Excise, Tirupathi* and Anr. 2007 (7) SCJ 194. He also states that a similar notification issued by the State Government for the year 2000-01 (Annexure-1) was challenged by some of the traders the same ground, but this Court after considering the factual and legal aspect ruled that plates, trays and cups made out of sal and siali leaves do not lose their Identity of forest produce and, therefore, demand of transit permit for transportation of the same was not illegal and accordingly dismissed the Writ Petition. He states that there is, thus, no scope for this Court to reopen that Issue In the present Writ Petitions.

4. In OJC Nos. 12626 of 2000 and 1763 of 2001, this Court took the view that plates, trays and cups made out of siali leaves come within the definition of "forest produce" as on removal of stitches they again turn out to be leaves. This finding has not yet been reversed or modified by the Apex Court or larger Bench. Earlier also, this Court in *Gangadhar Sahoo* (supra) while analyzing a similar issue took the view that if the intrinsic quality is not changed and a different product is not brought into existence then it is not to be accepted that the initial material has lost his nature and character and has ceased to be a forest produce. Accordingly in that case. it was held that in sistance of transit permit for the purpose of transportation of leaf, plates and cups etc. was not irregular or illegal. In the case of *Crane Betel Nut Powder Works* (supra) the issue was whether after conversion of betel nuts into sweet and scented, mouth freshener the product loses its character as betel nut. The Apex Court observed that even though betel nut is made into pieces, Crushed with spices, oil etc. the character of betel nut is not lost and therefore, the end product continues to be betel nut. All these judicial pronouncements tend to indicate that unless by process of manufacture, the originality of the article is lost and totally a new product come into being, the original status of the article does not change.

5. In the present case, in the process of manufacture of leaf plates, cups etc. the Siali and sal leaves are stitched and processed to give it a shape. Now doubt in the process of making of such plates, cups etc such alien articles like glue, strings, polythene are used, but the leaves continue its existence in the final product and, therefore, we have no hesitation to extend our respectful agreement with the findings of this Court recorded in OJC Nos. 12626 of 2000

and 1763 of 2001.

6. In the case of Tej Bahadu Dube (supra) the question was whether various types of handles made from sandalwood still continues as forest produce and whether transportation of such handicraft articles without transit permit was illegal. Since there was no provision in the Andhra Pradesh Sandalwood and Red Sandal Wood Transit Rules, 1969 requiring transit permit for transportation of handicraft articles made out of sandalwood, the Apex Court said that confiscation of final handicraft products on the ground of want of transit permit was not proper. The facts and circumstances of that case being totally different, the ratio cannot be applied to the present case. Similar is the situation in respect of Suresh Lohiya's case. There bamboos were cut to thin strips and mats were prepared. Since final product lost its original character of bamboo, mats were not considered as forest produce. These decisions, therefore, do not help the plea of the Petitioners.

7. On a close assessment of the factual and legal position, along with the case laws, we are of the considered opinion that plates, trays and cups made out of sat and siali leaves remain as forest produce and, therefore, demand of transit permit for transportation of such goods under Annexure-2 was neither illegal nor against the spirit of Constitution.

8. The Writ Petitions are, therefore, found to be without any merit and are dismissed.