(1999) 02 AHC CK 0150

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 885 of 1996

Indian Wood Products Co. Ltd. APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1), 301, 304
Forest Act, 1927 — Section 2(4), 51
Forest Produce Rules, 1978 — Rule 25, 28

Citation : AIR 1999 All 222

Hon'ble Judges : R.K. Singh, J;Binod Kumar Roy, J

Bench : Division Bench

Advocate : Vishnu Gupta, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—Whether Factory or Mill prepared ''Catechu'' or Katha is a ''Forest Produce'', as defined u/s 2(4) of the Forest Act is the real question which requires our adjudication in this writ petition in which the prayer of petitioner, which is a limited company, whose factory is situated at Izzatnagar District Bareilly in our State, is to quash Range Case Crime No. 16/KNP/95-96 under Rules 3/28 U.P. Transit of Timber and other Forest Rules, 1978 Complaint/Seizure Report dated 20-2-1996 (as contained in Annexure 10 to the writ petition). Its further prayer is to restrain the respondents from insisting it to take transit pass for moving Kattha manufactured by it.

2. The case of the petitioner is to this effect:--

(i) Since 1921 it is engaged in manufacturing Kattha out of Khair Wood, which is a natural forest wood.

(ii) Kattha is produced after processing Khair wood which takes a period of about 40-45 days. Firstly upper layer of the Khair wood is removed at the Kattha producing factories. Then inner hard wood is cut into small chips and boiled in water at about 102? C. Thus another liquor is prepared which is made thick by evaporation process. It is put into aluminium containers which are put into chillers. By this process thick liquor is formed into crystals and this crystallised and freezed liquor is filtered through vacuum filter. By this process water of the crystallised and freezed liquor is sucked. Thereafter the substance so recovered is mashed to make it uniform and given shape of about 1.5 millimetre thick plates. These plates are pressed by Hydraulic press to remove further water contents. Thereafter these plates are cut into 2" x 2" cakes. These cakes are dried in dehumidifier for about 15 days. Again these cakes are put in room through which normal air is passed for about 5 days.

(iii) the mill Kattha so obtained by the above process is eatable and marketable item and not a forest produce within the meaning of Section 2(4) of the Indian Forest Act. Thus for its transit no pass is required and in fact the petitioner company had never required such a transit pass. The petitioner company sells its mill Kattha to wholesalers and retailers all over India and if at each stage a transit pass is required from the Forest authorities then it will cause immense difficulty and in fact bring the business of the petitioner unworkable and to a halt.

(iv) There is vast difference between cottage industry Kattha and mill Kattha. The cottage industry kattha is made generally in the forest by the process of boiling of khair wood in Bhattis whereas mill kattha is manufactured by a complex mechanical process in a factory situated in town, and not forest. Their contents are also very different -- the cottage industry kattha contains tannin, whereas the mill kattha contains more of catechu; mill kattha can be used directly in bettels while the cottage industry kattha cannot be so used.

(v) The sale and distribution of Khair wood is completely controlled by the U.P. Forest Corporation, which allots it its registered units including the petitioner. U.P. Forest Corporation issues gate pass (appending gate pass dated 27-1-1996 as Annexure 4) when Khair woods are lifted from its depots. A transit pass (appending transit pass dated 27-1-1996 as Annexure 5) is also issued by the U.P. Forest Corporation. A fee of 50 paise is charged for every quintal of forest produce for movement and transit pass. When any unit purchases khair woods from out side the State in that event a transit pass has to be obtained at U.P. Check post.

(vi) The petitioner purchased khair woods from Hoshirarpur (Punjab) on 29-1-1996 which is evident from the Bill dated 29-1-1996 (copy appended as Annexure 6). A transit pass dated 30-1-1996 (copy appended as Annexure 7) was issued by the Divisional Forest Office, Bjiagpat range, Meerut. On 19-2-1996 the petitioner company sent 100 cases of Kattha broken and 50 cases of Kattha Pan Madhuri (each case containing 20 Kg. of Kattha) to M/s. Kothari Products Ltd. through transporter. The vehicle carrying the cases was checked at G.T. Road (West) barrier by the Forest Range Officer, Kanpur Range (respondent No. 2) who illegally seized them as well as the vehicle carrying them u/s 52 of the Indian Forest Act and registered the case in question. Respondent No. 2

submitted seizure report in the Court of Metropolitan Magistrate, X, Kanpur Nagar. As the Kattha manufactured by the petitioner company is not a forest produce, Respondent No. 2 had no jurisdiction to seize them or the vehicle carrying them and arrest the driver driving the vehicle. Provisions of Indian Forest Act and U.P. Transit of Timber and other Forest Produce Rules, 1978 are also not applicable in its case.

(vii) Rule 3 of the U.P. Transit of Timber and other Forest Produce Rules, 1978 is violative of Articles 19(1)(g) and 301 of the Constitution inasmuch as it imposes a prohibition for moving any forest produce without transit pass. This is an unreasonable restriction, since it covers all forest produce irrespective of circumstance. Such restriction, which is wholly unreasonable, is not in the public interest. Before making the Rules aforementioned previous sanction of the President under Article 304 of the Constitution of India has not been taken.

2.1 In the supplementary affidavit following facts have been stated :--

"2. That Webstor Dictionary defines the word CATECHU & TANNIN in the following manner:

CATECHU -- Any of several dry astringent substances; containing 40-45% Tannin obtained from certain acidic plants used in Dyeing and for Tanning."

"TANNIN -- Any of several dry astringent complex phenolic substances from barks, woods, leaves, roots and fruits of plants and variously used in tanning medicines, Dyeing, ink manufacture etc."

3. That the OXFORD DICTIONARY defines the word ''CATECHU'' and the word TANNIN'' in the following manner:--

CATECHU -- Any of a group of Yellowish or brownish Acidic astringent compounds related to gallic Acid, which occur in galls, barks and other plants tissues and have the property containing with animal hides and converting it into leather, such substances collectively."

Zerox copy of Page Nos. 206 to 208 of the book ''Economy Botany'' written by Prof. B.P. Pandey, M.Sc., Ph.D., Head of the Department of Botany, J. V. College, Baraut Ahita, published by S. Chandra and company Ltd., Ram Nagar, new Delhi, 1990 Edition has been appended for showing analysis of ''catechu'' and Kutch''.

3. In the counter-affidavit of the Respondents, which has been sworn by the Forest Ranger, Social Forestry Division Kanpur, it has been stated as follows :--

In the Forest Act there is no mention of a ''natural forest produce''. Only forest produce has been defined. J.P. Forest Corporation controls only the sale and distribution of khair wood, which is exploited by it from the forest owned by the State Government. The kattha which is Hindi equivalence of ''Catechu'' obtained by the process mentioned, is very much a forest produce. Transit pass issued by the competent authority is required for transit of kattha as per Rule 3 of the U.P. Transit of Timber and other Forest Produce Rules, 1978. Kattha whether found in or brought from a forest or not, is a Forest produce. So far as the provisions of Indian Forest Act and other associated Acts/Rules framed thereunder are concerned there is no distinction between ''cottage industry Kattha'' and ''mill kattha''. There is no such provision for the exemption of mill kattha therein. Rule 6 was framed by the Government of U.P. by virtue of powers vested in it by different provisions of Indian Forest Act for a necessary check of illegal exploitation of the forest produce. Even as per Bhargava''s Concise Hindi-English Dictionary the Hindi equivalence of the word ''kattha'' is catechu. Procurement of gate pass from Krishi Utpadan Mandi, Samiti, Bareilly by the petitioner also shows that kattha is a forest produce, since such passes are issued by the Samiti for all forest produces which are purchased/sold/transported from their respective areas. U.P. Government Notification No. 7027/17-121-62 dated 10-11-64 (appended as Annexure C.A. 2) clearly shows that it includes forest produce, whether processed or not for the purpose of U.P. Krishi Utpadan Mandi Adhiniyam. The Forest Officer was fully justified in his acts because there was violation of Rule 3 aforementioned, which is punishable under Rule 28. The seizure report was submitted by the Range Officer, Kanpur Range and not by Respondent No. 2. Without mentioning the factum of filing of this writ petition the petitioner filed applications in the Court of Metropolitan Magistrate, X, Kanpur Nagar, seeking release of the seized Kattha and the vehicle, which were disposed of by order dated 27-3-96 directing the forest officials to give supardgi of the seized kattha and the vehicle till the pendency of the trial. The directions were complied with by the Range Forest Officer, Kanpur Range. The claim made in paragraphs 2 to 4 of the Supplementary Affidavit are incorrect. In the light of above, the writ petition, which is based on false and fabricated statements, has got no force and hence deserves to be dismissed.

4. Sri Murlidhar, the learned Senior Counsel appearing on behalf of the petitioner, contended as follows :--

There is no dispute that ''catechu'' or ''kattha'' is an extract from heartwood khair tree, which is a forest produce but the question is whether factory made Kattha should be regarded as ''catechu'' within the meaning of the word ''forest produce'' as defined in Section 2(4) of the Indian Forest Act, which impresses within itself Timber as well as ''catechu'' both as per the ordinary dictionary (Webster'' and Oxford) meaning catechu is a wide term covering forest tanning rich astringent substances obtained from plants and variously used for tanning and dying etc. Thus the factory made kattha is not covered though it may cover Bhatti kattha which is prepared locally by merely boiling khair wood. A further distinction is obvious in these two products inasmuch as Bhatti Kattha is prepared in the vicinity of forest whereas the former is prepared in factory situated in town. He also took us to certain provisions of the Prevention of Food Adulteration Act and the Mandi Adhiniyam.

He also placed reliance on an interim order passed by the Lucknow Bench of the Court and on a two judges Division Bench of the Supreme Court in Suresh Lohiya

Vs. State of Maharashtra and Another, wherein it was held that ''bamboo mat'' is not included within the word ''forest produce'' though ''bamboo'' as a whole, is a forest produce.

5. Sub-section (4) of Section 2, which is the interpretation clause, of the Indian Forest Act, 1927 defines ''forest produce'' as follows:--

"(4) "forest produce" includes--

(a) the following whether found in or brought from, a forest or not, that is to say :--

timber, charcoal, caoutchouc, catchu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds kuth and myrabolarns, 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 soil, rock, and minerals including limestone, laterite, mineral oils, and all products of mines or quarries."

5.1. The definition of the forest produce is inclusive and thus wide and includes Catechu under Clause (e) and under (b) (i) all other produce of trees not mentioned herein which will include khair trees which is found in forest or brought from forest.

6. In the book ''Economy Botany'' referred to in the supplementary affidavit of the petitioner it is stated as follows :--

"Cutch -- Acacia catechu (L.f.) Willd.; Eng. Black cutch, Catechu; Hindi -- Khair, Khadira; Family -- Moimolsaccae, A tree native of India and Burma. In India, it is found in the Punjab, Madhya Pradesh, Uttar Pradesh and Bihar. The plant serves as a host for lac insect. Cutch is obtained from the heartwood of the tree. It is used as a dyeing stuff and as a masticatory. It is extensively used for dyeing canvas, fishing nets and ropes. In India, Kattha industry is mostly located in Bareilly, Gwalior and Bombay. Small pieces of the wood are boiled in water and the extract is evaporated down to a purplish-black, gummy, semisolia substance, which is moulded into blocks for marketing."

x x x x "Extraction -- Khair heartwood chips are boiled in water. The decoction is further concentrated and allowed to settle. Kattha crystals are formed which are separated from the mother liquor containing cutch. This is cut into cakes and dried. Heartwood of a mature tree contains about 3-4% of kattha.

x x x x "Improved Technology. Aluminium extractors, pans, containers etc. have been introduced in place of earthen vessels by KVIC. Control of temp, and use of hydrometer for measuring density have been added to help in improving the quality of output. Filter press, screw press, cake cutting machine etc., have replaced the age-old crude methods.

As a result (i) the yield of kattha has increased (ii) Catechin content has gone up to 58% as compared with 45% of old method.

(iii) lime is very much less.

(iv) Cutch can be recovered."

Extract taken from the book relied upon by the petitioner shows that the improved technology used by the petitioner company is merely improving quality of the output of catechu/kattha and not changing its physical feature.

6.1. According to Bhargava Standard Illustrated Dictionary ''catechu'' is a substance extracted from the bark of catechu tree. According to Oxford Hindi -- English Dictionary, 1993 Edition the word Kattha has been described "as an astringent and narcotic vegetable extract from the plant or tree Acacia catechu (eaten in betel leaf with lime, which in turns red)."

6.2. In Encyclopaedia Britannica, 15th Edition (Volume 2) Page 949 the word ''Catechu'' has been described as follows :--

"Catechu, also called CUTCH, or CASHOO (from Malay Kachu), extract used in dyeing and tanning. Obtained from several plants its chief sources are the wood of two species of Acacia. A. catechu and A. suma, both natives of India. This extract is known as black catechu. A similar extract, known in pharmacy as pale catechu and in commerce as gambir or terra japonica, is produced from the leaves of Uncaria gambir and U. acid a plants or the Indonesian archipelago. These extracts which have a sweetish test, are used in medicine as astringents. They consist chiefly of mixtures of catechutannic acid and catechin or catechuic acid.

The name catechu also is applied to an extract obtained from areca nuts, or betel nuts, the seeds of the fruit of Areca catechu a palm of southeastern Asia. It consists of the alkaloid arecoline, which is used as a worming agent in animals."

6.3. Catechu, which means in Hindi Katiha, stands included within the definition of the word ''forest produce'' whether found in, or brought from, a forest or not.

6.4. In Karnataka Forest Development Corporation Ltd. Vs. M/s. Contreads Private Limited and others, , a question cropped up before a three Judges Division Bench of the Supreme Court, as to whether ''rubber sheets'' are ''forest produce'' within the meaning of Section 2(7) of the Karnataka Forest Act? The Court held that ''rubber sheets'' are ''forest produce'' as they remain natural rubber in spite of processing and in this connection commercial parlance test is not to be applied. This was held after taking into account that the main crop for the rubber tree is latex, a milky white dispersion of rubber in water, which is harvested by process of tapping; the latex is channelled into a container attached to them; the latex gels dined up on the tapping panel (tree lac) and the collection cups shell scrap form part of the crop and are collected by the tapper.

6.5. In the The Forest Range Officer and others Vs. P. Mohammed Ali and others, , a question cropped up before a two Judges Division Bench of the Supreme Court as to whether ''sandalwood oil'' is ''wood oil'' within the meaning of Section 2(1)(f) of the Kerala Forest Act and hence a forest produce or not? It was held that extract of sandal wood oil even by mechanised process would be a ''wood oil'', after rejecting that the expression cannot be restricted in a narrow circumstance. The Court further held that the word ''include'' in the definition would show that it did not intend to "xclndc what was ordinarily and in common parlance be spoken of ''wood oil'' and that an inclusive definition has to be construed in its technical sense but in an exhaustive manner and cannot be restricted in such a manner so as to defeat the principal object and purpose of the Act. It also held that the process by which the oil is extracted is not decisive as oil maybe extracted by natural process of exudation or it may be extracted by subjecting to chemical or mechanical process and Sandalwood are cut into pieces. The purpose for which oil is used was also held not to be decisive. It further held that purposive interpretation would aid conservation of Sandal wood, a valuable forest wealth, prevent illicit felling and transportation of them and makes the manufacturers of sandal wood oil accountable to the possession of sandal wood trees or chips or roots etc.

6.6. Processing is understood as an action which bring forth some change or alteration of the goods or material which is subjected to the act of processing. It involves bringing into existence a different substance from what the material was at the commencement of the process. Processing essentially effectuates a change in form contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something.

6.7. ''Kattha'' is such an article which in its popular sense is known to be used on betel. It remains the same substance and does not become a different substance even after processing.

6.8 In this regard also are relevant the following recent three Judges Division Bench observation of the Supreme Court in Environment Awareness Forum v. State of Jammu and Kashmir 1999 (1) SCC 210 : AIR 1998 SCW 3841 when its order dated 4-3-97 passed in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , was breached :--

"3. From a perusal of the office notings, it appears that M/s. Bekay Katha Pvt. Ltd. represented to the State Government vide letter dated 18-3-1997 that this Court had exempted "minor forest produce from the ban on sellings" vide order dated 4-3-1997. On the basis of that representation, an office note was prepared in which para 65 reads thus :

"Katha is a minor forest produce. The Katha is manufactured from the khair wood. In pursuance of the order dated 4-3-1997, there is now no ban on the felling of khair trees from the forest areas as per the working plan,"

4. This note was put up before Mr. S.R. Bhagat, the then Additional Secretary, Forest, who on 20-3-1997 directed the forwarding of the representation of M/s. Bekay Katha Pvt. Ltd. to the Principal Chief Conservator of Forest for necessary action, "keeping in view the Supreme Court orders and the contractual obligations". The file was then put up before Mr. Vijay Bakaya, Additional Chief Secretary, Forest who recorded in para 68 of the noting as follows :

"This is a matter of interpretation whether ''khair'' can be treated as minor forest produce. Let us discuss on 25-3-1997 at 3 p.m., with Pr. CCF, MDSFC, Conservator working plan."

Opinion was thereafter sought from ICFR and E, Dehradun as to whether "khair" tree was an MFP.

5. After the matter was referred to the Indian Council for Forestry Research and Education, another note appears to have been prepared by the office and submitted to Shri Bhagat, Additional Secretary, Forest. In Para 70 of the noting it is recorded."

"In view of the above opinion of the Indian Council for Forestry Research and Education, khair is a minor forest produce and in terms of the order dated 4-3-1997 passed by the Supreme Court of India, there is now no ban on extraction of MFPs from the forest areas."

6. Mr. Vijay Bakaya, the Additional Chief Secretary, Forest in paragraph 75 of the note observed:--

''This issue was discussed at length with all the officers of the Department. They were of the view that as per the books on the subject, only katha is MFP and khair tree is timber and therefore, Supreme Court''s directive on MFP is not applicable."

7. However, in spite of the above observation, we find that directions were issued to allow khair to be felled for extraction of katha to M/s. Bekay Katha Pvt. Ltd.

8. The noting in para 65 (supra) to the effect that katha is a minor forest produce and that it is manufactured from khair wood read with the noting in para 75, in which it is categorically recorded that even as per the books on the subject, it is only katha which if MFP while khair is timber go to show that the distinction was very much present to the minds of the officials and they were also conscious of the fact that the order of this Court dated 4-3-1997 was not applicable to khair trees as vide orders of this Court dated 10-5-1996 and 12-12-1996 ban was placed on felling of various trees including khair trees. The order dated 4-3-1997 did not lift the ban on the felling of khair trees and yet the

State Government officials allowed the felling of khair trees. Prima facie, we are satisfied that there has been an deliberate attempt to circumvent the order of this Court and there has been a willful breach of the order of this Court."

6.9 From the aforesaid discussion it is clear that even factory made katha, which is catechu, is a forest produce within the meaning of the definition of the word ''forest produce'' as defined u/s 2(4) of the Indian Forest Act.

6.10 The decision of Supreme Court in Rathi Khandsari Udyog v. State of U. P. : AIR 1985 SC 679 is also relevant. The majority judgment, while adjudicating as to whether ''khandsari sugar'' is covered by definition of the word ''agricultural produce'', within the meaning of the word khandsari as defined in Section 2(a) of the U. P. Krishi Utpadan Mandhi Adhiniyam, 1964, held as follows:-- (i) since khandsari has not been defined by the Act, it must be construed in its popular sense that is to say in the sense in which people conversant with the subject-matter with which the statute is dealing, would attribute to it. This principle of construction was affirmed and reaffirmed by this Court in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, . (ii) The submission made that ''khandsari sugar'' is produced with the aid of relatively modern plant and machinery employing a large number of workers was inconsequential, (iii) Khandsari sugar stands covered under the word ''khandsari''.

6.10A In Krishi Utpadan Mandi Samiti v. Shankar Industries the Supreme Court applying the ratio laid down in M/s. Rathi Khandsari : : AIR 1985 SC 679) supra, held that ''Raskat'', which is an inferior quality of ''Gur'', is an ''agricultural produce'' within the meaning of Section 2(a) of U. P. Krishi Utpadan Mandi Adhiniyam, 1964.

6.11 The decision of the Supreme Court in Suresh Lohiya AIR 1996 SCW 4111 relied upon by Sri Murli Dhar, is a two Judges Division Bench decision, which is distinguishable on facts, besides contrary to the earlier decisions rendered by the Coordinate Bench and three Judges Division Bench of the Supreme Court referred to as above.

7. Chapter VIII of the Indian Forest Act deals with ''of the control of timber and other forest produce'' in transit.

7.1 Section 41 of the Act aforementioned reads thus:--

"41. Power to make rules to regulate transit of forest-produce (1) The control of all rivers and their banks as regards me 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 take rules to regulate the transit of all timber and other forest produce.

(2) In particular and without prejudice to the generality of the foregoing power 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);

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorise to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes for the issue, and for the payment of fees therefore;

(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 purpose of this Act to affix a mark;

(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;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit or timber of 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;

(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;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits; the converting, cutting, burning, concealing or marking 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;

(i) regulate the use of properly 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.

7.2 In Nripendra Chandra v. Administration of Tripura AIR 1969 Gau 62 it was held that the State Government is possessed of ample powers to make Rules relating to transit of timber and other forest produce, whether found in, or brought from reserved forest or private lands.

7.3 In The State of Tripura Vs. Seshimohan Malakar and Others, it was held that there is implied power in the Government to regulate transit even if it may not be property of the Government.

8. Chapter VIII-A deals with regulation of manufacture and preparation of forest articles based on forest produce.

8.1 Section 51 therein authorises the State Government to make Rules in regard to regulation of manufacture etc. of the articles based on forest produce.

8.2 1 (A) of Section 51-A authorises the State Government to make Rules in regard to concerning of establishment and regulation by licences, permits or otherwise and the payment fee therefore of saw mills and units including factories engaged in manufacture or preparation of kattha out of khair tree.

8.3 Sub-section (b) of the aforementioned Section authorises the State Government to provide for regulation by licences, permits or otherwise of the supply of raw materials relating to preparation of kattha, out of khair tree.

8.4 By virtue of powers vested in it under Sections 41 42 51 and 52 of the Indian Forest Act the State of U. P. enacted the U. P. Transit of Timber and other Forest Produce Rules, 1978, which came into force with effect from its publication in the U. P. Gazette Extraordinary, dated 27th September, 1978:--

8.5 Rule 3 of the aforesaid Rules reads thus:--

"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 Schedule A to these, rules, from an officer of the Forest Department or a person duly authorised 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.

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 recognised under the Act, within the limits of a village in which it is produced;

(b) of forest produce by contractors'', agency from the forest 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;

(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.

8.6 Rule 4 of the aforesaid Rules reads thus:--

"4. Officers and persons to issue passes-- (1) The following officers and persons shall have power to issue passes under these rules--

(a) for forest produce belonging to Government or not owned by any other person, the Conservator of Forest, the Divisional Forest Officer, the Sub-Divisional Forest Officer or any other officer authorised in this behalf in writing by the Conservator of Forest or the Divisional Forest Officer;

(b) for forest produce owned by any person, such person or his agent if so authorised in writing by the Divisional Forest Officer;

(i) provided that any person who desires to obtain a transit pass or authorisation to issue passes under Clause (b) of such rule (1) above, shall apply in the form in Schedule ''B'' and the Divisional Forest Officer may, before issuing the transit pass or authorisation to issue such passes, conduct such inquiry and call for such information as considered necessary;

(ii) such authorisation shall specify the period during which it shall remain in force, and shall also specify the route to be adopted and check Chowki or depot through which the produce must pass; and

(iii) any authorisation may at any time be changed (on request or otherwise) or cancelled by the Divisional Forest Officer or Conservator of Forests.

(2) The officer competent to issue transit pass or to authorise any person to issue transit pass may refuse to issue or authorise to issue transit pass.

(3) Appeal against the orders passed under Rules 4(1)(b) and 4(2) shall lie with the next higher authority (Conservator of Forests in case the order has been passed by the Divisional Forest Officer, and Chief Conservator of Forests or Additional Chief Conservator of Forests in case the order has been passed by the Conservator of Forests) and his decision shall be final.

8.7 Rule 5 of the aforesaid Rules reads thus:--

"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 rate; corresponding receipt shall be granted in the form given in Schedule ''C'' --

(i) per lorry load of timber or other forest produce

.....Rs.5.00 pertonne of capacity

(ii) per card load of timber or other forest produce

.....Rs.2.50

(iii) per camel load of timber or other forest produce

.....Rs. 1.25

(iv) per pony load of timber or other forest produce

.....Rs.0.50

(v) per head load of timber or other forest produce

.....Rs.0.25

8.8 Rule 25 of the aforesaid Rules reads thus :--

"25. Forest produce in transit may be stopped and examined by certain officer.-- (1) Any forest produce in transit to which these rules apply and any person, animal, vehicle, vessel or craft carrying such forest produce, may be stopped, detained, examined and checked at any place by any forest, police or revenue officer of the State Government not below the rank of Forest Guard, Sub-Inspector of Police or Kanoongo, as the case may be, if such officer shall have reasonable grounds for suspecting that any money which is due to Government in respect thereof has not been paid or that any forest offence has been or is being committed in respect thereof:

Provided that no such officer shall vexatiously or unnecessarily detain any forest produce which , is lawfully in transit, not vexatiously or unnecessarily unload any such forest produce or cause the same to be unloaded, for the purpose of examination.

(2) The person incharge of such forest produce shall furnish to any such officer all the information required by him in connection with the forest produce and he is transporting the same under a transit pass, shall produce such pass on demand for the inspection of such officer and shall not in any way prevent or resist the stoppage or examination of the said forest produce by such officer.

8.9 Rule 28 of the Rules reads thus :--

"28. Penalties for breach of rules.-- (1) Whosoever contravenes any of the provisions of these rules shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(2) In case where the offence is committed after sunset and before sunrise, or after making preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence, the penalty to be imposed shall be double of those mentioned in Sub-rule (1)."

8.10 Neither the challenge to the vires of the Rules aforementioned was pressed before us nor do we find that they ultra vires Articles 19(3)(g) 301 or 304 of the Constitution. Thus Rules have been validly enacted for apparent reason namely to prevent illegal exploitation of Forest Produce and forest trees and ecological imbalance.

9. We have got ascertained from the office about the fate of Writ Petition No. 2598 of 1986 filed before the Lucknow Bench in which an interim order was passed relied upon by Sri Murlidhar directing release of kattha and the vehicle

holding that the writ petitioner was not required to obtain transit pass. We have been informed that the writ petitioner was not required to obtain transit pass. We have been informed that the said writ petition was dismissed by a Division Bench on 21-8-97. This apart it is well known that an interim order does not adjudicate any issue finally and unless preserved/maintained it evaporates with the dismissal of the case in which it was passed.

10. In fairness we also put on record that Sri Murlidhar, the learned Senior Counsel also attempted to make a distinction with reference to the provisions of Food Adulteration Act and the provisions of U. P. Krishi Utpadan Mandi Adhiniyam, 1964 which we have deliberately omitted, inasmuch as from the consideration of the provisions of Forest Act and the Rules framed therein there is no doubt in our mind that even factory produced ''kattha'' or ''catechu'' is a forest produce within the meaning of the Act.

11. In the result, this writ petition is dismissed, but without costs.

12. The Court/authorities are directed to proceed further in accordance with law.

13. The office is directed to serve two Xerox copies of this order by 12th March, 1999 on Sri Sudhir Mehrotra, learned Additional Govt. Advocate for its communications to the Court and the authorities concerned both.

