

(2001) 08 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 17536 of 1994

J.P. Samuel and Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Wild Life (Protection) Act, 1972 — Section 2(37)

Citation : AIR 2002 Mad 14 : (2002) 141 ELT 338

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : R. Yashod Vardhan, for the Appellant; S.R. Sundaram, SCGSC and Kovi Ramalingam, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has been carrying on the business of exporting seafans, dried flowers and other decorative items from 1961. The petitioner also

registered with the Marine Products Export Development Authority set up by the Government of India to give a thrust to marine exports. The

petitioner has been exporting seafans for several years. In the year 1994, the petitioner secured an order from a German firm for supply of 1400

kgs. of seafans. The first consignment of 343 kgs. of seafans were not permitted to be exported on the opinion of the 2nd respondent, the Regional

Deputy Director of Wild Life Preservation, Government of India, Ministry of Environment and Forests, New Delhi that the seafan is a form of

coral and covered by the expression ""Wild Life"" as used in Entry No. 1 of the negative list of exports and could not be allowed for export. The

petitioner thereafter approached the 4th respondent, the Assistant Director, Marine Products Export Development Authority, Tuticorin who

clarified that seafans/seawhips did not fall in the First Schedule of Wild Life (Protection) Act and did not figure in the negative list of exports.

Therefore, the 4th respondent informed the 3rd respondent namely the Addl. Collector of Customs, Tuticorin to permit the export of seafans and

seawhips. As against 1400 kgs. of seafans to be supplied to the German firm, the petitioner had exported 343 kgs. in March, 1994 pursuant to the

opinion of the 3rd respondent. When the petitioner got the second consignment of 380 kgs. ready in July, 1994 and presented the shipping bill and

connected papers to the 3rd respondent despite the permission accorded to export seafans in March, 1994, the 3rd respondent once again

referred the bill to the 2nd respondent. The 2nd respondent on 21-3-94 opined that seafans are part of wild life and therefore advised the ban for

export. The 1st respondent, Ministry of Commerce, Government of India, New Delhi in letter No. 6/I/94-EP(MP), dated 24-8-94 informed the

petitioner that the export of seafans is covered under the negative list of exports as per the EXIM policy of the Government of India, Ministry of

Environment and Forests and the export of the same is prohibited. It is against the said order, the present writ petition has been filed.

2, Mr. R. Yashod Vardhan, learned Counsel for the petitioner would contend that the ban for export of seafans on the ground that the same is

covered under the negative list of exports as per the EXIM policy of the Government of India, Ministry of Environment and Forests is not actually

correct. In fact, the said order came to be passed based upon the opinion of the 2nd respondent made in his letter dated 21-3-94 wherein the 2nd

respondent has opined that the seafans and seawhips are forms of corals, which group- coelenterate ""is a part of the animal kingdom in view of the

definition of wild life. u/s 2(37) of the Wild Life (Protection) Act, 1972, ""wild life"" includes any animal, bees, butterflies, crustaceans, fish and moths

and aquatic or land vegetarian which forms part of any habitat. He also opined that corals are deemed to be covered under the provisions of ""wild

life"" as defined in the Wild Life Act which must be considered as applicable to at least all wild animals in so far as the EXIM policy is concerned.

However, the learned Counsel submitted that Section 2(36) of the Wild Life (Protection) Act, 1972 defines ""wild animal"". According to the said

section, ""wild animal"" means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule III, Schedule

IV or Schedule V, wherever found. In none of the Schedule to the said Schedules I to V, the seafan is included as one of the wild animal. Hence,

calling the seafan as wild animal for the purpose of imposing ban on the same for export would be outside the scope of the said section. The

learned Counsel would further contend that even under Serial No. 1 of Item 158 of prohibited items in the negative list of exports, only all forms of

wild animals are included in the negative list. In the said list, there is no reference to the seafans. In the absence of the inclusion of seafans in the

negative list also, the export of seafans cannot be banned. The learned Counsel also submitted that even in the EXIM policy, only the marine

products in Sl. No. 41 have been included and there is no indication of seafans. Therefore, the learned Counsel submitted that the impugned order

imposing a ban on the export of seafans when the seafans are not included in the definition of wild animals and the seafan is not one of the items

enumerated in the negative items, the request of the petitioner for export of seafans cannot be refused as has been done by the impugned order.

3. Mr. S.R. Sundaram, learned Counsel appearing for the respondents 1 and 4 on the other hand submitted, of course, the petitioner was earlier

permitted to export 343 kgs. of seafans on the opinion of the 4th respondent to the effect that seafans can be allowed to be exported as they do

not be considered as wild animal. However, when the petitioner applied for permission for export of 380 kgs. of seafans on the second time, the

request was forwarded to the 2nd respondent who has opined that the seafans are wild animals and it can be also brought within the definition of

Section 2(37) of the Wild Life (Protection) Act and can be considered as wild animal. The 4th respondent was not competent to decide as to

whether the seafans would fall within the definition of either wild life or wild animal of the Act and therefore the petitioner cannot take advantage of

the earlier permission granted for export of seafans. The learned Counsel would further draw my attention that even as early as on 7-2-94 the

respondents have been communicated from Central Marine Fisheries Research Institute wherein it is clearly stated that the seafans are banned

items of export. The said letter has been referred to in a subsequent communication dated 4-4-94 of the Acting Director of Central Marine

Fisheries Research Institute specifically stating that seafans are banned items. He also submitted that by a subsequent letter of the Addl. Director of

Wild Life, Government of India, Ministry of Environment and Forests dated 7-4-94 has also communicated that the seafan, seafan thorn, seawhip

and sea sponge are banned items as per the export policy. Only on the basis of the above communications, the impugned order has been passed

informing the petitioner that seafan is covered under Serial No. 1 of Item 158 of the EXIM policy. Therefore, it is not correct to contend that

seafans are not included in the definition of wild life or wild animal. The learned Counsel for the 2nd and 3rd respondents would also adopt the

arguments of Mr. S.R. Sundaram and submitted that the seafans are included in the definition of Wild Life (Protection) Act as well as wild life and

therefore the ban is imposed for export.

4. In view of the above submissions, it is to be seen as to whether seafans can be covered under the definition of wild animal u/s 2(36) and can be

called as wild life u/s 2(37) of the Wild Life (Protection) Act, 1972. Sections 2(36) and 2(37) of the Act is extracted as under :

wild animal"" means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule III, Schedule IV or

Schedule V, wherever found.

wild life"" includes any animal, bees, butterflies, Crustacea, fish and moths and aquatic or land vegetation which form part of any habitat.

As per the definition of ""wild life"" which includes any animal including aquatic. The contention of the learned Counsel for the petitioner is that unless

the respondents bring seafans under the definition of wild animal as specified in Schedules I to V, they cannot impose ban more particularly, the

seafans are not one of the items covered in the negative list. It is to be seen that the seafans and seawhips are forms of corals which group

coelenterate ""which is a part of the animal kingdom. Whenever pragmatism and public interest necessitated for exclusion from the purview of

definition of wild life common ""sea food"" items like fish, prawns, lobsters, etc. they were granted exemption. However, insofar as the seafans are

concerned, it is to be considered as a coral which is also a part of the animal kingdom as could be seen from the definition of seafan as found in

encyclopaedia britannica and the said definition can be conveniently extracted as follows.

Seafan (Gorgonia), any of a genus of invertebrate marine animals of the order

Gorgonacea (class Anthozoa, Phylum Chordata). It is a variety of coral comprised of polyps, cylindrical sessile (attached) forms, that grow together in a flat fanlike pattern; hence, the name seafan. Each polyp in the colony has some multiple of six tentacles, as opposed to the eight-fold symmetry of the similar black coral. A central internal skeleton, composed of a flexible, thorny substance called gorgonin, supports all branches of the colony, and the living tissues are often coloured in hues of red, yellow, or orange. The polyps spread out their tentacles to form a plankton-catching net. In most cases the fan-shaped colonies grow across the current which increases their ability to ensnare prey.

There are about 500 species of Gorgonia, and they differ markedly in their modes of branching. They all, however, grow to approximately 61 centimeters (2 feet) in height. Seafans are found in the shallow waters of all oceans but they are especially abundant along the Atlantic coasts of Florida, Bermuda and the West Indies.

From a reading of the definition, it could be seen that it is an aquatic and it can be brought under the definition of wild life which definition also includes any animal. When once this Court comes to the conclusion that the seafans which are aquatic can be considered as a part of animal kingdom and falls within the definition of wild life, there cannot be no other interpretation except the seafan shall also be considered as a wild animal. Once that conclusion is arrived, it is to be now seen whether the respondents are justified in banning export of seafans. In Serial No. 1, Item 158 of the negative list of exports, it is specifically stated that all forms of wild animals are prohibited for export. Therefore, it cannot be contended that the respondents shall not impose a ban on the export of seafans since the seafans cannot be considered as wild animals. It is to be worth noted that when similar consideration came up before the Marine Products Export Development Authority who in their letter dated 2-7-94 exempted the ban and permitted the petitioner to export considering their long standing export performance and EIA rejection rates and made it clear that further export of seafans by the petitioner may please be permitted after advise from them. Only in pursuance to the said letter, the present impugned order dated 24-8-94 has been passed. It is to be further noted that in the interest of serving environment also, the export of

seafans which are considered to be precious form of aquatic should not be allowed to be exported for the following reasons.

(i) Corals are very slow growing organisms with only the tip of the huge coral formations bearing live animals and therefore cannot be harvested at

sustainable levels (ii) Commercial over exploitation of corals of developing countries (e.g. Indonesia, Philippines) for the bio-active substances by

developed nations of the west has resulted in large scale devastation of this resource with many ill side effects which we should avoid in time in this

country by enforcing a total ban (iii) Coral beds form the habitat of many larvae of such commercially valuable marine products as prawns, oysters,

etc. and any damage to the delicate slow growing corals would cause decline in populations of these as well (iv) Method of collection of corals for

the trade often damages this delicate ecosystem and the expected non-collection of corals due to the export ban would be in public interest and (v)

During cyclones which affect coastal Tamil Nadu (Tuticorin "area as well) the off shore coral is lands (that have resulted from slow growth of

corals over the past several millennia) take the brunt of the tidal waves and save the main land from greater damage and coastal erosion. (In view

of the importance of corals as a whole Government of India in this Ministry are considering inclusion of corals appropriately in Schedules of the

Wild Life Act as well).

Therefore, I do not find any merit in the contention of the learned counsel for the petitioner that seafans are not covered under the definition of wild

animals and when the seafans are not included in the negative list, the ban imposed for such export of seafans by the impugned order cannot be

sustained. Accordingly, I do not find any merit in the writ petition and the same is dismissed. No costs.