
(2004) 08 KL CK 0025
In the High Court Of Kerala
Case No : O.P. 12715 of 2003 (L)

M/s. Higashimaru Feeds (India) Ltd.

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Live-Stock Importation Act, 1898 — Section 2, 2(a), 2(b), 2(d), 3A

Citation : (2005) 2 ILR (Ker) 206 : (2004) 2 KLJ 475 : (2004) 3 KLT 502

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : C.K. Karunakaran and C.E. Unnikrishnan, for the Appellant; P.S. Sreedharan Pillai (SCGSC), for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The petitioner is an importer of fish meal and it is challenging Ext. P4 public notice dated 09.07.2001 issued by the Commissioner of Customs, Ext. P5 notification dated 17.10.2001 issued by the Central Government and Ext. P6 public notice dated 21.01.2002 issued by the Commissioner of Customs. The brief facts of the case, are the following: The import of live-stock to India, is governed by the provisions of Livestock Importation Act, 1898. Section 2(a) of the Act defines the expression "infectious or contagious disorders" as including tick-pest, anthrax, glanders, farcy, scabies and any other disease or disorder, which may be specified by the Central Government by notification in the Official Gazette. Section 2(b) defines live-stock as "live- stock includes horses, kine, camels, sheep and any other animal which may be specified by the Central Government by notification in the Official Gazette". The Parliament has amended the Live-stock Importation Act of 1898 by Live-stock Importation (Amendment) Act, 2001. The definition "live- stock products" has been incorporated in Section 2 of the Act as Section 2(a). The said definition reads as follows: "Live- stock products includes meat and meat products of all kinds including fresh, chilled and frozen meat, tissue, organs of

poultry, pig, sheep, goat, egg and egg powder, milk and milk products" bovine, ovine and caprine, embryos, ova, semen, pet food products of animal origin and any other animal product which may be specified by the Central Government by the notification in the Official Gazette". A new Section, Section 3A has been added to the Act, enabling the Central Government to regulate, restrict or prohibit import of any live - stock product into the territories of India, which may be affected by any infectious or contagious disorders. In exercise of the power u/s 3A, Ext. P4 notification has been issued by the Commissioner of Customs, restricting the import to India live- stock products, including pet food products of animals. In exercise of the power u/s 2(d) read with Section 3A, the Union of India notified that the live - stock products shall cover products, eggs and seeds of all aquatic animals, including fish crustaceans and mollusks and import of them have been made, subject to the issuance of Sanitary Import Permit. By Ext. P6 notification, the Commissioner of Customs informed all importers and Custom House Agents that import of aquatic products, like fish-meal, can be made only with a Sanitary Import Permit from the competent authority and subject to clearance by the Animal Quarantine Officer, Chennai.

2. The petitioner, who is an importer of fish- meal, in view of the above notification, is bound to obtain Sanitary Import Permit and clearance from the Animal Quarantine Officer, Chennai, to import fish- meal. Therefore it is constrained to challenge Exts. P4 to P6. According to the petitioner, the inclusion of fish or fish products in the live - stock products, is clearly unauthorized by the provisions of the Live - stock Importation Act, 1898. The learned counsel for the petitioner relies on the statement of objects and reasons for the introduction of the enactment. Reliance is also placed on the Preamble of the Act, to show that it was enacted to govern the cargo of horses and similar domestic animals. Though Section 2(d) defines live - stock as including pet food products of animal origin and any other animal product, which may be specified by the Central Government, it cannot be taken that the said provision will enable the Government to notify as live - stock products, something totally unrelated to live - stock. Reliance is also placed on the decision of the Apex Court in *Maheswari Fish Seed Farm v. Tamil Nadu Electricity Board* ((2004) 2 RC 791), to contend that live - stock will not include fish. The relevant portion of the said judgment reads as follows:

It is true that some of the dictionaries include rearing live - stock within the meaning of agriculture. Livestock means domestic animals especially horses, cattle, sheep and pigs (see *Chambers Twentieth Century Dictionary*, page 737). Historically, these animals are associated with agriculture as they either help in carrying out agricultural operations or they are domestically maintained in agricultural fields because they can feed on products or by products of agriculture in its narrow sense. Fishes are not domestic animals and are not included within the meaning of the term "live - stock."

In the light of the above quoted judgment, it is submitted that fish can never be

treated as live - stock. Therefore, it is submitted that the inclusion of fish-meal in the definition of live - stock products and the consequential notifications, requiring the petitioner to get Sanitary Import Permit, are all ultravires and unauthorised by the provisions of the Act. Therefore, they are to be declared void and unsustainable, it is contended. The respondents have filed a counter affidavit supporting the impugned notifications. The dictionary meaning of "animal" is any living thing, other than a human being, that can feel and move, eg: a lion, bird, snake, fish or a fly. Therefore, fish is also an animal. It is called an aquatic animal. Section 2(d) treats any pet food product of animal origin as live - stock product and it enables the Union of India to notify any other animal product as live - stock product. The above amendment to the Act is not under challenge. Therefore, the Government is competent to notify any other animal product also as live -stock product, even though in the ordinary sense, the same may not have any connection, whatsoever, with the live - stock. In other words, the Legislature has empowered the Government to include non- live - stock products in the ordinary sense also among the live - stock products for the purpose of this particular statute. In exercise of that power, the impugned orders Exts. P4 and P5 have been issued. So, I feel that those notifications are intra vires. The Preamble of the Act or the objects for bringing in the legislation about a century back, cannot now be pressed into service to defeat the express provisions of the Act. Only if there is any ambiguity, reliance can be placed on such areas for interpretation. But, the Parliament has willed that any other animal product can also be treated as live - stock, provided the Government issue a notification and this Court is bound to respect the will of the legislature. If Ext. P4 and P5 are valid, there is nothing wrong with Ext. P6 also. Fish- meal is a product generated from the aquatic animal, fish. So, the technical contention urged by the petitioner cannot be accepted in this case. The decision of the Apex Court in Maheshwari Fish Seed Farm (supra) was concerning the concessions to farmers in the matter of electricity tariff, who are engaged in agriculture. The Apex Court has held that raising of live - stock will form part of agriculture. But, fish farming may not amount to raising of live - stock. Therefore, it was held that fish farmers are not entitled to get the concessional tariff available to agriculturists. The interpretation given by the Apex Court in the decision of Maheshwari Fish Seed Farm that fish is not live - stock, can have no application to the facts of this case. In view of the above position, the Original Petition fails and it is dismissed.