
(2006) 02 GAU CK 0016
In the Gauhati High Court
Case No : Writ Appeal No. 529 of 2001

Mulibash Hastasilpa Samabay Samity Ltd. and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Assam Forest Regulations, 1891 — Section 3(3)

Citation : AIR 2006 Guw 113 : (2006) 1 GLT 477

Hon'ble Judges : B. Sudershan Reddy, C.J.; H.N. Sharma, J

Bench : Division Bench

Advocate : B.R. Dey and R. Das, for the Appellant; B. Goyal, G.A., for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, C.J.—The petitioners in CR No. 3627/98 are the appellants in this Writ Appeal. This Writ Appeal is directed against the judgment and order dated 27-9-2001 whereby and where under the learned Single Judge dismissed the writ petition filed by the appellants.

2. The writ petition has been filed by the appellants herein with a prayer to declare that the finished products made of the bamboo and canes including the mats, chati, beti etc. are not "forest produce" within the meaning of that expression as provided for u/s 3(3) of the Assam Forest Regulation, 1891, as amended from time to time.

3. The sum and substance of the case set up by the appellants in this writ appeal is that they are not required to obtain transit pass/permit for transportation of the said finished products. Learned Counsel for the appellants in support of the contention relied upon the Notification issued by the State Govt. on 4-5-1992, which is to the following effect:

GOVERNMENT OF ASSAM FOREST DEPARTMENT, SECTT. BRANCH, DISPUR.

No. ERS.160/91/13 Dated Dispur, 4th May, 1992

From : Shri S. B. Roy Choudhury, ACS Deputy Secretary to the Govt. of Assam.

To : The General Secretary,

Malibash Hasin Slipa Samabay Samiti Ltd., Banamali Road, Karimganj, Cachar.

Subject : Transit Pass of bamboo products (Beti & Chati) under Khadi Cottage Industries.

Ref: Your Letter dated 13-12-91.

Sir,

With reference to your letter quoted above, I am directed to inform you that for transportation of finished products including Beti & Chati No T.P. is required.

This cancels this Office letter No. FRS 160/91/12 dated 24th March, 1992.

Yours faithfully, Deputy Secretary to the Govt. of Assam, Forest Department, Dispur.

4. The appellants herein sought for appropriate relief virtually seeking enforcement of the Notification dated 4-5-1992 under which, admittedly, no transit pass/permit as such required for transportation of finished products including Beti & Chati. The Notification dated 4-5-1992 issued by the Govt. still continues to be in operation. The validity of the Notification dated 4-5-1992 is not the subject matter of the writ petition.

5. The learned Judge even after noticing the said Notification, framed the question requiring adjudication by the Court in the following manner:

(i) Whether the finished products like Beti & Chati can be treated as "forest produce" for the purpose of transit pass?

In our considered opinion, framing of the issue itself was not required since nobody challenged the Notification dated 4-5-1992 issued by the Govt. clarifying that for transportation of finished products including Beti & Chati: no transit pass/ Permit as such is required to be obtained. It is nobody's case that the Notification dated 4-5-1992 issued by the Govt. suffers from any infirmities or illegalities.

6. However, the question that falls for consideration is not res integra but squarely covered by the authoritative pronouncement of the Supreme Court in Suresh Lohiya Vs. State of Maharashtra and Another, wherein the Supreme Court while construing analogous provisions in Indian Forest Act, 1927 and having framed the question whether bamboo mate is a "forest produce" as is this expression known to the Indian Forest Act, 1927, held that "... though bamboo as a whole is forest-produce, if a product, commercially new and distinct, known to the business community as totally different is brought into existence by

human labour, such an article and product would cease to be a forest-produce. The definition of this expression leaves nothing to doubt that it would not take within its fold an article or thing which is totally different from forest-produce having a distinct character..."

That Court accordingly held that bamboo mate is not a forest produce.

7. In view of the aforesaid authoritative pronouncement of the Supreme Court, there is nothing left as such for adjudication.

8. The learned Judge, however, took the view that Beti & Chati are nothing but split form of bamboo, which is capable of being transformed without any skill and, therefore, cannot be treated as finished products. The view taken by the learned Judge is a contrary to the view expressed by the Supreme Court. Whether Beti & Chati are the finished products is not an issue either in the writ petition or before us in this Writ Appeal. In the circumstance, the conclusion drawn in the Notification that Beti & Chati are the finished products and totally distinct from bamboo as understood in the commercial world cannot be interfered with. In the circumstances, we find it difficult to sustain the view taken by the learned Judge for dismissing the writ petition.

9. As noted (supra), it was a simple case where the writ petitioner sought for appropriate direction enforcing the Notification dated 4-5-1992 issued by the Govt., which is binding on all its subordinates. The authorities are required to implement and follow the Notification dated 4-5-1992 issued by the Government as long as it is in operation.

10. For the aforesaid reasons, the judgment under appeal is set aside. Accordingly, this writ appeal is allowed without any order as to costs.

11. This order, however, shall not preclude the State Govt. to take appropriate steps, if it so desires, to make necessary amendment to the Notification dated 4-5-1992.