

(2002) 12 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12626 of 2000

Muralidhar Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 5

Citation : (2003) 1 OLR 178

Hon'ble Judges : R.K. Patra, J;L. Mohapatra, J

Bench : Division Bench

Advocate : G. Rath., B.R. Sarangi, P.K. Rout and P.K. Kar, for the Appellant; Additional Government, for O.Ps. 3 and 4, J. Patnaik, A.A. Das, R. Rath, B. Mohanty, T.K. Patnaik, P.K. Nayak and S. Das for O.Ps. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Validity of Clauses 6 and 7 of the order of the Government in the Forest and Environment Department communicated in letter No. 1781I/F&E. dated 7.11.2000 (Annexure-1) is the subject matter of challenge in this writ petition. Under the impugned Clause 6. the Divisional Forest Officers have been empowered for regulating the transport of Sal leaves including leaf plates and leaf cups made out of Sal leaves by issue of transit permits. As per the impugned Clause - 7, royalty is leviable at 5% of the collection price of Sal leaves.

By the Government order of the Forest and Environment Department contained in letter No. 20437/F&E dated 20.12.2000 (Annexure-A/3) levy of royalty stipulated under the aforesaid Clause -7 has been withdrawn. Therefore, the writ petition challenging the impugned Clause - 7 has become infructuous. What now remains to be decided is the validity of the impugned Clause - 6 of the Government order (Annexure-1).

2. The petitioners are traders and transporters of leaf plates and leaf cups made

out of Sal leaves. Their case is that they have been transporting finished leaf plates and leaf cups made out of Sal leaves to different places in the State as well as outside the State without any objection from any departmental authorities. By trading and transporting leaf plates and leaf cups not only they earn some income, they also help the primary collectors of Sal leaves to earn their livelihood by making finished items as leaf plates and leaf cups out of Sal leaves. By production of finished items like leaf plates and leaf cups, the original nature of Sal leaves lose their identity and therefore, they cannot be regarded as "forest produce". As such, for transport of leaf plates and leaf cups, no transit permit is necessary. According to them, the impugned Clause-6 of the Government order contained at Annexure-1 is illegal and arbitrary being violative of the provisions of Articles - 14 and 19 of the Constitution.

The opposite parties have filed their counter affidavit justifying the necessity of transit permit in respect of transport of leaf plates and leaf cups made out of Sal leaves.

3. The first question that arises for consideration is whether the Sal leaves can be held to be "forest produce" ?

Section 2 (g) of the Orissa Forest Act, 1972 defines "forest produce" as follows :

"Sec. 2(g) : "Forest produce" includes -

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

(a) timber, charcoal, caoutchouc, catchu, wood-oil, resin, nature varnish, bark, tussar cocoon, lac, gums, roots of Patal Garuda, Mahua flower, mahua seeds, myrabolans, kendu leaves, sandal wood, tamarind, hill-broom, siali leaves, siali fibres, sal seeds;

(b) xx xx xx

(c) xx xx xx

(ii) the following when found in or brought from a forest, that is to say -

(a) trees and leaves, flowers and fruits and all other parts or produce or trees not herein before mentioned:

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

"Sal leaves" has not been itemised as "forest produce" in Section 2(g)(i)(a) {supra}. Item "Sal leaves" however comes within the definition of Section 2(g)(ii) (a) (supra) in view of the fact that they are found in and brought from forests and have not been mentioned in Section 2(g)(i). Therefore, we have no hesitation to hold that the item "Sal leaves" is a forest produce.

4. The next question is whether by making leaf plates and leaf cups out of Sal leaves, the latter lose their identity. The contention of the petitioners is that with the making of leaf plates and leaf cups a new product comes into existence, thereby Sal leaves lose their identity. In this connection, the petitioners heavily relied on order of this Court dated 7.5.1987 in OJC No. 1503 of 1987 (Rusi Sahu v. State of Orissa). judgment dated 13.5.1998 in OJC No. 6972 of 1995 Bhagaban Das Agarwalla and Others Vs. State of Orissa and Others, as well as order dated 22.12.1989 of the Calcutta High Court in Civil Order No. 8200 (W) of 1989.

Counsel for the department placed reliance on the judgment dated 4.9.1990 of this Court rendered in O.J.C. Nos. 1162 and 1223 of 1990 (Gangadhar Sahu v. State of Orissa) in which it has been held that Siali leaves do not cease to be Siali leaves when they are stitched together to make a plate or cup.

5. The rival contentions raised by the parties require careful consideration. Let us, therefore, examine the orders of this Court in seriatim.

The first order is that of a Division Bench of this Court dated 7.5.1987 in OJC No. 1503 of 1987 (Rusi Sahu v. State of Orissa). The order reads as follows :

"3. 7.5.1987. Heard counsel for the parties :

Inasmuch as the Sal and Siali leaves are converted into plates after undergoing manufacturing process, no Timber Transit Permit is necessary for transportation whether inter-district or intra-district.

We dispose of this writ application with the aforesaid observations."

The above is a decision supported by no reason. A decision which is not express and is not founded on reasons has no precedential value and has no binding effect. Moreover, the said case was noticed by a Division Bench of this Court in the case of Gangadhar Sahu [supra]. But it was not followed because in the case of Rusi Sahu (supra) another earlier decision of this Court in the case of State of Orissa v. Antaryami Panigrahi (1982) 50 S.T.C. 98 was not noticed at all (It may be noted that in both the Benches R.C. Patnaik, J. was common). The Division Bench in the case of Gangadhar Sahu on due consideration held that the earlier decision rendered in Antaryami Panigrahi's case (supra) is a well discussed one supported by reasons and agreed with the conclusion reached therein. In view of the fact that in the cases of Antaryami Panigrahi and Gangadhar Sahu the point has already been decided, we need not deal with the order of the Calcutta High Court referred to in the writ petition.

In the next case Bhagaban Das Agarwalla and Others Vs. State of Orissa and Others, the question came up for consideration before this Court was - whether "Sabai Rope" or "Sal Leaf Utensils" can be equated to grass? It was a case under the Orissa Agricultural Produce Markets Act, 1956. In the Schedule of the Act different items of forest produces have been mentioned as agricultural produce. "Sabai rope" or "Sal leaf plates" do not find place in the Schedule. In the

circumstances, the ratio of that case has no application to the case at hand.

At this stage, we may profitably, refer to the decision of this Court in Gangadhar Sahu (supra). After noticing the order of this Court in Rusi Sahu as well as the decision of Antaryami Panigrahi (supra) this Court held that Siali leaves do not cease to be Siali leaves when they are stitched together to make a plate or cup. There is no process of manufacture involved. The intrinsic qualities of the said article are not changed and no different product is brought into being. By merely stitching the Siali leaves to a plate or cup, no different commodity is manufactured. In order to reach the aforesaid conclusion, this Court relied on many decisions of the Supreme Court including the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, in which it was held that pineapples when processed into pineapple slices do not cease to be pineapples and no process of manufacture was involved. We are in respectful agreement with the judgment rendered in the case of Gangadhar Sahu (supra) and held that Sal plates and cups are not different from Sal leaves. After all. Sal plates and cups are made by stitching leaves with tags and once the tags are removed, they turn out to be leaves. Therefore, Sal plates and cups come within the definition of "forest produce". The Orissa Timber and Other Forest Produce Transit Rules. 1980 require that except as provided in Rule 5 all forest produce in transit shall be covered by a permit called "transit permit". Therefore, regulating transport of Sal leaf plates and Sal leaf cups made out of Sal leaves to outside the State by issue of transit permit cannot be held to be illegal or contrary to law. We accordingly hold that Clause 6 of the Government order at Annexure-1 does not suffer from any vice or invalidity.

For the reasons aforesaid, the writ petition has no merit which is accordingly dismissed.