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**(1997) 08 PAT CK 0053**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 3687 of 1996 (R)**

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| Ranchi Timber Traders Association and Others | APPELLANT  |
| Vs                                           |            |
| State of Bihar and Others                    | RESPONDENT |

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**Date of Decision :** 19-08-1997

**Acts Referred:**

Bihar Forest Produce (Regulation of Trade) Act, 1984 — Section 35  
Bihar Saw Mills (Regulation) Act, 1990 — Section 27  
Constitution of India, 1950 — Article 19(1)  
Forest Act, 1927 — Section 41, 78  
Forest Produce Transit Rules, 1973 — Rule 1

**Citation :** AIR 1998 Patna 31 : (1997) 45 BLJR 1598 : (1997) 2 PLJR 673

**Hon'ble Judges :** Nagendra Rai, J;M.Y. Eqbal, J

**Bench :** Division Bench

**Advocate :** Anil Kumar Sinha and Sheel Prasad, R.B. Mahto and M.S. Mittal, for the Appellant; R. Prasad, Senior Advocate, A.G., V. Shivnath, G.P.I and Ramesh Thakur, J.C. to G.P.I., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Nagendra Rai, J.—The petitioners have filed the writ application for quashing the notification of the State Government dated 9-10-1996, a copy of which has been annexed As Annexure-4 to the writ application, by which Sub-rule 3 of Rule 3 of the Bihar Timber and other Forest Produce Transit Rules, 1973 (hereinafter referred to as the Transit Rules) has been deleted wherein exemption with regard to 10 varieties of timber from operation of Transit Rules was given and for a direction restraining the respondents from acting pursuant to and in furtherance of the Transit Rules against the petitioner No. 1 and the members of the petitioner No. 1 and also to restrain them from enforcing direction contained in letter dated 18-10-96 issued by the Range Officer Timber Depots Range Ranchi (respondent No. 5). Subsequently, by an amendment petition filed on 21-11-1996 they have challenged the vires of the Transit Rules and also sought for declaration that the Transit Rules has been impliedly repealed pursuant to

enactment of the Bihar Saw Mills (Regulation) Act, 1990.

2. The petitioner No. 1 is a Society registered under the Societies Registration Act and is an Association of Timber Traders specially of Ranchi district. Petitioner No. 2 is its Secretary and petitioner Nos. 3 to 6 are its members. All the members of the Society carry on the business of Saw Mills and the present writ application has been filed in representative capacity. It is asserted that the State Government in exercise of power under Sections 41, 42 and 76 of the Indian Forest Act (hereinafter referred to as the Forest Act) framed a Transit Rule, 1973 which require permit by a competent authority for transportation of the timber and other forest produce as detailed in the said Rules. The State Government issued a notification published in the Official Gazette on 4-7-94 by which Sub-rule 3 was added after Sub- Rule 2 Rule 3 of Transit Rules. It also amended Rules 6 and 8 of the aforesaid Transit Rules. A copy of the said notification has been annexed as Annexure-2 to the writ application. By virtue of the aforesaid amendment the provision of the Act was made inapplicable to ten varieties of timbers, namely, Aam, Imli, Jainun, Kathal, Mahua, Gramin Bas, Pipal, Bargad, Pakar and Barhar. Rules 6 and 8 were also amended. Rule 6 prescribes the Form to be filed by the private owners of the forest who wanted to transport the timber from their land. Rule 8 was also amended by which punishment prescribed earlier was enhanced. Thereafter the impugned notification has been issued deleting Sub-rule 3 of Rule 3, the effect of which is that the exemption from operation of the Transit Rule to 10 varieties of timbers or trees has been withdrawn. It is asserted that the aforesaid notification contained in Annexure-4 cannot be given effect to as the same has not been published in the Official Gazette in terms of Section 78 of the Forest Act. It is also asserted on their behalf that the provision of the Forest Act does not apply to the timber and other forest produce grown on the raiyati lands as the same is not the forest produce as defined under the Forest Act and as such no Transit permit is required with regard to the export or import of the timber and other forest produce grown on the land of the raiyats. The Bihar Government has enacted Forest Produce (Regulations of Trade) Act, 1984 and Bihar Saw Mills (Regulations) Act, 1990 with a view to regulate the establishment and running of the Saw Mills in the State of Bihar as well as the trade in the forest produce and there is an elaboration provision under the afore said Acts controlling the movement of the timber and forest produce and as such the transit rules stands impliedly overruled or ceased to have any utility. It is also submitted that the Transit Rules of 1973 is violative of Article 19(1)(g) of the Constitution of India on the ground of substantive and procedural unreasonableness. It has put unreasonable restriction on the petitioners in carrying on their business/trade. The rules have given unfettered power to the authorities to refuse or grant permit. No guideline has been laid down. No remedy has been provided to challenge the order of the authority and as such the same is to be declared void/*ultra vires*.

3. Counter affidavits have been filed on behalf of the respondents-State and its Officers and their stand is that the notification dated 9-10-96 was published in

the Official Gazette on 12-10-1,996 and a copy of which has been annexed as Annexure-A to the counter affidavit. According to them two enactments, namely, Bihar Forest Produce (Regulation of Trade) Act and Bihar Saw Mills (Regulation) Act operate in different fields. Former has been enacted for the purpose of providing for State monopoly in trade of specified forest produce in order to enable the grower to get the fair price of the produce. The forest produce has been defined under the said Act and the private forest produce has not been included in the said Act and it is applicable only to the specified forest produce as specified under the Schedule of the Act and the latter has been enacted for the purpose of regulation of Saw Mills in the State under which the Saw Millers have to get themselves registered and file regular returns of timber etc. obtained converted and sold in their establishments. It applies only after forest produce reaches at Saw Mills. Major portion of forest produce are transported for consumption in the form of poles, baulies, agriculture equipment, beams, rappers, fencing posts and fire wood etc. without Saw milling or conversion through mechanical means or minor dressing or axes and other hand tools.

4. It is further stated that ten species of timbers and trees were in transit rules from before and they were deleted in 1994. These species did not occur generally in the Government Forest. The State Government received the reports of large scale falling of fruits bearing species in rural areas as well as other irregularities due to relaxation given by the notification of 1994. The matter was examined in full detail by high level technical committee headed by the Chief Conservator of Forests and the Director State Trading, Bihar in which the opinion of the principal Chief Conservator of the Forests and the recommendation of the State Forests Advisory Committee was also considered and thereafter it was found that relaxation given in 1994 was causing damage to the rural economy and the environment and the facilities were being misused and thereafter Sub-rule (3) was deleted by notification which was published in the Official Gazette on 12-12-1996. The Indian Forest Act as well as the Transit Rules applies to all the forests including the private forests and the same is evident from definition of the Forest produce as contained u/s 2(4) of the Forest Act. The transit rules have been enacted to prevent and control the illegal transportation as well as theft and smuggling of the forest produce and to facilitate the genuine owners of timbers etc. to dispose of their produce. The rules are not ultravires, on the other hand it has been enacted under the provision of Sections 41, 42 and 76 of the Indian Forest Act to effectuate one of the objects of the Forest Act, namely, the transit of forest produce.

5. On 19-11-96 an application for intervention was filed by the World Wide Fund for Nature, India for impleading it as respondent and the prayer was allowed and it has been added as respondent No. 6. It has also filed counter affidavit wherein it has asserted that the rules are valid and they have been enacted to achieve one of the objects of the Forest Act.

6. On 13-12-96 four persons claiming themselves to be raiyats filed an

application for adding them as parties respondents and they were also added. They have supported the case of the petitioners and stated that the forest produce grown on their land is not covered by the transit rules and as such no transit rules can be insisted upon by the authorities for transportation of the forest produce grown on their lands.

7. Learned counsel for the petitioners as well as the intervenor petitioners have submitted the following points;

1) The Government Notification dated 9-10-96 has not been published in the official Gazettee in terms of Section 78 of the Forest Act and as such the same cannot be given effect to. The result is that earlier exemption granted in 1994 vide Annexure-4 shall remain in force.

2) The Forest Act and the Transit Rules framed thereunder are applicable only in cases of Government Forest and it has no application to the limbers and forest produce grown on the private lands by the raiyats and as such no transit permit is required under the Transit Rules for transportation of the timbers and other forest produce grown on the lands of the raiyats.

3) The Transit Rules itself is violative of Article 19(1)(g) of the Constitution of India as it puts unreasonable restriction on the writ petitioners in carrying out the trade and business. There is no elaborate procedure with regard to grant of permit under the Transit Rules and uncanalised and unguided power has been given to the authority without making any check in the shape of remedy of appeal.

4) In view of the provision contained under the Bihar Forest Produce (Regulation of Trade) Act and Bihar Saw Mills (Regulations) Act 1990 the provision of the Transit Rules stand impliedly repealed as there is an elaborate provision under the aforesaid Acts regarding control and management over the forest produce including control over the transportation of the forest produce.

8. Learned counsel for the respondents- State as well as Intervenor respondents have combated all the submissions advanced on behalf of the petitioners. It has been submitted that the notification contained in Annexure-4 dated 9-10-1996 have been published in the Official Gazette on 12-10-1996 and 100 copies were sent to the Secretary of the Forest Department. A copy of the same was also given to the Secretary of Petitioner No. 1. It is also submitted that the Forest Act and the Transit Rules apply to all the forest produce whether grown or collected from the property of the Government or grown or collected from the private property. The Transit Rules is intravires and is not violative of Article 19(1)(g) of the Constitution of India. The Transit Rules has been enacted to affectuate the policy of the Government in public interest and the restrictions put are neither excessive nor arbitrary. There is elaborate provision under the Transit Rules for grant of permit. It is also submitted that the Bihar Forest Produce (Regulation of Trade) Act and the Bihar. Saw Mills (Regulations) Act, 1990 operate in different fields and have been enacted for different objects and purpose and as such those

enactments do not in any way serve the purpose for which the Transit Rules has been enacted.

9. There is world wide awareness to protect the forest as ruthless destruction of the forest has become a matter of concern in the sense that the same is causing ecological and environmental problem. Several conferences and meetings have been held all over the world from time to time to take effective measures to preserve the forests. The Parliaments also being conscious of this evil has added Article 48A and 51A to the Constitution of India by 42nd amendment Act, 1976 under directive principles. The said provisions have been enacted casting a constitutional duty on the State and the Citizens to protect and improve the forests and other natural resources of the country. Article 48A provides that the State shall endeavour to protect and improve the environment and safe guard the forests and wild life of the country and Article 51A provides inter alia to protect and improve the natural environment including forest, lakes, rivers wild life and to have compassion of living creatures. The aforesaid provisions were brought in the Constitution with a view to protect the forests and other natural resources from destruction. The Parliament has also enacted in 1980 Forest Conservation Act for the purpose of conservation of the forests and it provides that without prior approval of the Central Government nothing should be done by the State Government or any authority regarding dereservation or use of forest land.

10. The apex Court also times without number has held that the forest and other natural resources has to be protected even if the same causes inconvenience to section of the public as protection of the forest and natural resources is must for existence of the society. Dwindling of the forest will cause immense harm to the society. Recently in the writ petition (Civil) No. 202 of 1995, T. N. Godavarman Thirumulkpad v. Union of India the apex Court while dealing with the provisions of the Forest Conservation Act issued general direction that all on going activity within any forest in any State throughout the country, without the prior approval of the Central Government must cease forthwith.

11. Learned counsel for the petitioners submitted that the notification was not published in the Official Gazette and in support of the same they have annexed two certificates given by the Superintendent of Government Press, Secretariat Patna dated 30th October, 1996 and 14th October, 1996 as Annexure 5 and 7 respectively. It shows that the notification was not published in the Official Gazette upto 14-10-96 whereas the stand of the respondent State is that the notification was published in the Official Gazette on 12-10-1996 and on 8-11-1996 one hundred copies were sent to the concerned department and on 11-11-1996 a copy of the same was also sent to the Secretary of the petitioners' Association.

12. This Court called for a report from the Superintendent Government Press as to whether the aforesaid notification has been published or not. The Assisiant Superintendent of the Office of the Superintendent Government Press has sent a

report on 19-12-1996 stating that the notification has been published in the Official Gazette on 12- 10-1996 and hundred copies were sent to the department concerned. The petitioners have not challenged the averments made in the counter affidavit that copies of the aforesaid notification was sent to the Secretary of the petitioner No. 1 on 11-11-1996. Thus, the materials on the record show that the notification was published in terms of the provision of Section 78 of the Forest Act.

13. Learned counsel for the petitioners relied upon a Division Bench judgment of this Court reported in the case of *The Narhar Notified Area Committee v. The State of Bihar* 1968 PLJR 582 in support of his submission. In the said case it was held that notification in the Official Gazette cannot mean printing in the Official Gazette only. It must mean its publication in the sense of notifying it to be public by sending copies of it to the various subscribers or to the persons or institutions who are entitled to get such copies or by exposing it for sale to the general public. In the said case it was found that the notification was only printed in the Official Gazette and it was never published. In the present case, as stated above, it has been found that it was not only printed but also it was circulated to the concerned person or authority and as such there was publication of the notification and the submission advanced on behalf of the petitioners is without any substance.

14. According to the petitioners as the Forest Act speaks only of the Government Forest the Transit Rules framed under the Forest Act will only apply to the timber and forest produce in the Government Forest. It has no application to the private Forest or the produce grown by the Raiyats on their own lands.

15. To consider the aforesaid point the provision of the Forest Act has to be considered. The Forest Act was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. Section 2(4) defines the forest produce. Sub-section (a) of Section 2(4) provides that timber, charcoal, caouthouc, catcchu, wood-oil resin, natural varnis, bark, lac, Mahua flowers, mahua seeds and other varieties of forest produce whether found in or brought from a forest or not are forest produce. Chapter II deals with the reserved forests which empowers the State Government to constitute any forest land or wasteland which is the property of the Government or over which the Government has propriety rights, or to the whole or any part of the forest produce of which the Government is entitled a reserved forest, Chapter III empowers the State Government to constitute village forests. Chapter IV empowers the State Government to declare any forest land or waste land which is not included in a reserved forest but which is the property of the Government, or over which the government has propriety rights, or to the whole or any part of the forest produce of which the Government is entitled as protected forest. Chapter VII contains the provision regarding control of timber and other forest produce in transit and the same empowers the Government to make rules to regulate transit of forest produce. Section 41 : Power to make rules to regulate

transit of forest produce :-- (1) The control of all rivers and their banks as regards the 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 make rule 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 and or export or moving of such timber or other produce without a pass from an officer duly authorised 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 and for the payment of fees therefor;

(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 purposes 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 of timber 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 or 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 off saw-pits, 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 property 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 one person and provide for the levy of fees for suchh registration.

(3) The State Government may direct that any rule made under the section shall not apply to any specified class of timber or other forest produce or to any specified local area.

16. The definition of the forest produce read with provision of Section 41 clearly shows that the forest produce does not mean the forest produce of the government land only but it also included the forest produce grown or collected from the private forest and individuals. Section 41 of the Forest Act is of regulatory in character and it confers power on the State Government to make rules with regard to the timbers and forest produce which may not be the property of the government.

17. Similar question came for consideration before the Division Bench of Orissa High Court in the case of Kasi Prasad Sahu Vs. State of Orissa and Another, , wherein the Orissa Timber and Forest produce Transit Rules, 1958 was challenged on the ground that the said transit Rules applies only to the timber and forest produced or grown or collected from the property of the Government and not to the private individuals. The provisions were similar in nature. The Division Bench after considering the provisions of the Forest Act and the Transit Rules held:

"Thus though most of the sections of the Indian Forest Act deal with Government forests and Govt. lands and forests produce grown on which property, nevertheless, there are many sections especially those in Chapter VII which confer regulatory power on Government to control movement of forest produce even though the produce may not be the property of Government. It is well known that Government may exercise regulatory power over movement of property even though the property may not belong to Government.

I am in full agreement with the law laid down in the said case. Thus, the Transit Rules framed u/s 41 of the Act applies to the private forests as well as forests grown by private individuals also and as such any transit of such forest produce requires transit pass for movement.

18. Learned counsel for the petitioners further contended that the Transit Rules suffers from substantive as well as procedural unreasonableness in as much as it puts unreasonable restriction on the petitioners to carry on trade and business. The State Government has already enacted the Bihar Saw Mills (Regulations) Act, 1991 to regulate the establishment and running of the Saw Mills and as such further restriction by transit rules is arbitrary and unreasonable. Regarding procedural unreasonableness it was submitted that the Transit Rules gives unfettered or uncanalised power to the concerned authority vested with power to grant transit permit as no guideline has been provided as to whether permit is to be granted or not to be granted and no check has been provided over the exercise of the power by the concerned authority. It was submitted that on account of the aforesaid reasons the Transit Rules violates Articles 19(1)(g) of the Constitution of India,

19. Learned counsel for the petitioners in support of the aforesaid submission relied upon the judgments of the Apex Court rendered in the case of Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, , Saghir Ahmad v. State of U. P. AIR 1984 SC 728, R.M. Seshadri Vs. The District Magistrate, Tanjore and Another, and Mohammed Faruk Vs. State of Madhya Pradesh and Others, .

20. Whereas learned counsel for the State submitted that the rules have been framed to effectuate the one of the policies or object of the Forest Act and object behind enactment of the rules is to control the transit with a view to prevent the illegal felling and removal of the forest produce. The rule has been enforced since 1973 and at no point of time any person has complained of any harassment on account of delay in grant of permit. There is elaborate provision under the rules regarding grant of transit permit and registration of timber. The rules applies to forest produce of government land as well as forest produce of raiyaties land. It was also stated that no delay is being caused in granting transit permit and as and when the parties approach for grant of permit by filing an application the same is granted within a reasonable time. He has relied upon the case of Virji Lalji Patel and Co. Vs. State of Madhya Pradesh and Others, and T.V. Balakrishnan Vs. State of T.N. and Others, in support of his submission.

21. The fundamental right granted under Article 19(1)(g) of the Constitution of India giving rights to the citizen to carry on occupation, trade and business is not absolute but controlled by the provisions contained under clause 6 of the said Article, which empower the State Government to put reasonable restriction on exercise of the aforesaid right. There is presumption in favour of the constitutionality, however, if it is shown prima facie that any provision violates any of the right conferred by Article 19(1) the onus lies on the law making authority to show that it is covered by the restrictive clauses.

22. Recently the Supreme Court in the case of Papnasam Labour Union Vs. Madura Coats Ltd. and Another, , has indicated the principles or guide lines which are to be taken note of while considering the validity of a statutory provision when it is challenged on the ground of unreasonable restriction. The said principles or guide lines are as follows :--

a) The restriction sought to be imposed on the fundamental rights guaranteed by Article 19 of the Constitution must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved.

b) There must be a direct and proximate nexus on a reasonable connection between the restriction imposed and the object sought to be achieved.

c) No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration on the question of quality of reasonableness therefore, is expected to vary from case to case.

d) In interpreting constitutional provisions Court should be alive to the felt need of the society and complex issues facing the people which the legislature intends to solve through effective legislation.

e) In appreciating such problems and felt need of the society the judicial approach must necessarily be dynamic, pragmatic and elastic.

f). It is imperative that for consideration of reasonableness or restriction imposed by a statute, the Court should examine whether the social control as envisaged in Article 19 is being effectuated by the restriction imposed on fundamental right.

g) Although Article 19 guarantees all the seven freedom to the citizen, such guarantee does not confer any absolute or unconditional right but is subject to reasonable restriction which the legislature may impose in public interest. It is, therefore, necessary to examine whether such restriction is meant to protect social welfare satisfying the need of prevailing social values.

h) The reasonableness has got to be tested both from the procedural and substantive aspects. It should not be bound by processual perniciousness or jurisprudence of remedies.

i) Restriction imposed on the fundamental right guaranteed under Article 19 of the Constitution must not be arbitrary, unbridled, uncanalised and excessive and also not unreasonably discriminatory. Exhypothesi, therefore, a restriction to be reasonable must also be consistent with Article 14 of the Constitution.

b j) In judging the reasonableness of the restriction imposed by Clause (6) of Articles 19, the Court has to bear in mind directive principles of State Policy.

k) Ordinarily, any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in police interest."

23. Keeping in view of the aforesaid principles in mind now the provision of the Transit Rules is to be considered to find out as to whether the same puts unreasonable restriction on the trade and business of the petitioners or not. The said Transit Rules has been enacted in 1973 in exercise of power under Sections 41, 42 and 76 of the Forest Act to regulate the transit of timber and other forest produce mentioned in the said Transit Rules.

24. Rule 3 provides that the timber and other forest produce shall not be exported or imported or removed unless transit permit is granted by the concerned Forest Authority as mentioned therein. According to the said rules the Transit permit has to contain the name of the grower of the forest produce, the route through which the forest produce is to be transported and the hammer mark to be given by concerned authority mentioned in the said rule. It exempts the application of the rules with regard to the forest produce required for domestic and agricultural purposes. Name of the competent authority to grant transit permit has been given under Rule 7 of the Act. By amendment 1994

the proforma of the application form has been included in the schedule which is to be filed by the owners of the private forest.

25. The rule has been framed to effectuate the policy or object of the Forest Act, namely, to control the transit of timber and forest produce. Thus, there is reasonable connection between the restriction imposed and the object sought to be achieved. The said rule was enforced in 1973 and nobody has complained that there is delay in granting of transit permit. There is clear averment that the permits are granted within reasonable time. Thus, taking into consideration the relevant facts I am of the view that the Transit Rules has been framed to effectuate the policy of the forest Act and it is in public interest and it serves the interest of the society and as such there is no unreasonable restriction on the right of the petitioners to carry on trade and business.

26. The Transit Rules containing the similar provisions framed under the Forest Act by the Madhya Pradesh Government was challenged on the ground of violation of Article 19(1)(g) of the Constitution of India in the case of Virji Lalji Patel and Co. Vs. State of Madhya Pradesh and Others, . The rules framed by the Madhya Pradesh provided that no forest produce shall be moved into or from within the State of Madhya Pradesh except as hereinafter provided without a transit pass in form annexed 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 condition of such pass or by any route or to any destination other than the route or destination specified in such pass. Rule 4 of the said rules is as follows; 1). The following officers and persons shall have power to issue passes under rules;

a) for forest produce belonging to Government or not owned by any 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 Forests, Divisional Forest Officer or Sub-Divisional Forest Officer.

b) forest produce owned by any person, such persons or his agent if not authorised in writing by the Divisional Forest Officer :

Provided that:

i) any person who desires to obtain a transit pass or authorisation to issue passes under Clause (b) of Sub-rule (1) shall produce evidence to the satisfaction of the Officer concerned regarding his claim or ownership of the forest produce for the movement of which a transit pass is required;

ii) such authorisation shall specify the period during which it shall remain in force; and ;

iii) any authorisation may at any time be cancelled by the Divisional Forest Officer.

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."

The aforesaid Rule 4, as quoted above, gives the details of the officers and persons who have power to issue passes in case of forest produce belonging to the Government. In case of forest produce owned by any person other than government such person is competent to issue passes if so authorised by the competent authority mentioned therein. The proviso provided that in case the person who desires to obtain a transit pass or authorisation has to produce evidence to the satisfaction of the officer concerned regarding his claim of ownership of the forest produce for the movement.

27. It was contended that the rule provides unfettered power to the authorities in case of forest produce owned by any person. He has to produce evidence to the satisfaction of the officer concerned regarding his claim and ownership before grant of transit pass. No method has been provided in the rule for guiding the officer for his being satisfied on claim of ownership of the forest produce. The satisfaction of the Officer concerned is subjective. There is no provision in the rules for controlling improper refusal of the passes. No appeal is provided under the rule. Dealing with the aforesaid submission a Division Bench of Madhya Pradesh High Court reported in the case of Virji Lalji Patel and Co. Vs. State of Madhya Pradesh and Others, held as follows : (at Pp. 215 and 216 of AIR)

"Thus contention, in our opinion, cannot be accepted. In the first place preamble of the Act indicates that the Act is meant to consolidate the law relating to forest produce, the transit thereof and the duty leviable thereon. The forests are categorized as reserved forests, protected forests, village forests and forests owned by other besides the Government. With a view to secure protection of forests and forest produce and regulate and control their transit and to prevent illegal destruction, felling, removal by stealth or otherwise powers are vested in the State Government to make rules for their import, export, moving of timber etc. Without pass from a duly authorised officer and for production and return of such passes. Difficulties such as are envisaged in the petition are also contemplated namely where there are no marks on timber due to obliteration of these marks and special rule of evidence is provided that in such cases the burden will be upon the person laying claim to the property to establish that it is his and he is entitled to deal with it. This special rule of evidence casting the burden of proof upon the person in possession is necessitated by reason of peculiar nature of the property and difficult task of providing for plugging every nook and corner of large tracts of forest lands owned by Government as reserved, protected and village forests and distinguish their produce from that of private individuals holding stock of their own or required by them under contracts from Government.

The impugned Rules 3 and 4 are meant to effectuate some or all of these objects. The provision contained in Rule 4(1)(b) of the Rules requiring a person or his duly authorised agent to secure and produce a pass as contemplated in the rule is an appropriate way to control or regulate the transit and to prevent undue

or unauthorised fellings or removal. The person laying a claim or alleging ownership of any such timber is obviously in a better position to establish such a claim before an official whose duty it is to see the proper enforcement of the rules. The fact that such burden is cast upon a person who is in a better position to discharge it cannot mean that there is unreasonable restriction upon the right to acquire and hold property or to deal with it. The Rules clearly indicate what he has to see. The circumstance that no appeal is provided does not necessarily mean that there is arbitrary and unregulated power in the officer concerned when he is required by law to see materials produced before him in connection with the claim or title, since the object and the policy of law for carrying out and effectuating which he is empowered to act are indicated. In case there is misuse of power confided in him in individual cases contrary to the object and due to improper or illegal motives an aggrieved person is sufficiently protected by the safeguard provided for discriminatory official acts by Article 14 of the Constitution. It may be stated here that the petitioner does not assail the vires of Section 41 of the Indian Forest Act, No. XVI of 1927."

28. In the case of T.V. Balakrishnan Vs. State of T.N. and Others, one of the questions for consideration was as to whether the T. N. Timber Transit Rules 1968 imposes unreasonable restriction on the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India. The Apex Court upheld the said rules on the ground that the said rules are regulatory and not prohibitive. The Apex Court agreed with the reasonings given by the High Court in upholding vires of the said rules. It is apt to quote paragraph 4 of the aforesaid judgment, which runs as follows;

"The High Court further found that the impugned Rules were only regulatory and did not in any manner infract the right of the petitioners guaranteed under Article 19(1)(g) of the Constitution of India. The High Court rejected the argument on the following reasoning :

When the rules as framed are intended to subserve the aims of the Act which was meant to consolidate the law relating to the forest produce, the transit thereof and the duty leviable thereon; and hence those rules were meant to effectuate same or all of these objects. Having noticed the uphill task faced by the Government in preventing illicit felling of trees over large extents with limited manpower, and checking at check-posts at forest frontiers having been found to be insufficient, ineffective and being no match to the swift manner in which they are carried away by lorries; and on raids conducted in places like Mettupalayam, Tambaram and elsewhere large stocks of illicit timber having been found in saw mills and with dealers the impugned rules, which insist on a Form II pass to accompany during every movement of timber, and hammer mark being affixed on the transported timber, are absolutely necessary for the protection and management of forest wealth in the State of Tamil Nadu. Hence, the impugned rules are not violative of Article 19(1)(g)."

29. The reasoning given by the High Court for upholding the T. N. Transit Rules

applies in case of Transit Rules in question. The Transit Rules in question is regulatory in nature and it has been enacted with a view to effectuate the policy of the Forest Act and to control the illegal felling and removal of the forest produce. There is also no procedural unreasonableness as the Rules contain detail provision for grant of transit permit. No doubt there is no remedy of appeal but that by itself is no ground to hold that the provision is unreasonable. The person aggrieved can challenge the matter before the Court,

30. Learned counsel for the petitioners submitted that in the case of Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, similar provision of U. P. Control Order conferring unrestricted power on the authority was struck down on the ground of violation of Article 19(1)(g) of the Constitution of India. From perusal of the fact of the said case it appears that under the control order the concerned authority was given power without giving any guide-lines regarding exemption to be granted from the operation of the Control Order.

31. The Apex Court dealing with the aforesaid provision held that unrestricted power has been to the concerned authority to make exemption and even if he acts arbitrarily or from improper motives, there is no check over it and no way of obtaining redress. The said case was considered by the Apex Court in the case of Harishankar Bagla and Another Vs. The State of Madhya Pradesh, . In that case the legality of Clause 3 of the Cotton Textiles (Control of Movement) Order 1948 was challenged. The said order was issued by the Central Government in pursuance of the power vested under Clause 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946. The aforesaid clauses provided that no person shall transport or cause to be transported by road, rail, air, sea or inland and navigation any cloth, yarn or apparel except under and in accordance with :-- (i) a general permit notified in the Gazette of India by the Textile Commissioner, or (ii) a special transport permit issued by the Textile Commissioner." Rule 8 provided that the Textile Commissioner may, by notification in the Gazette of India, prescribe the manner in which any application for a special transport permit under this order shall be made. The Central Government had prescribed forms for application for obtaining permits and the conditions under which permits can be obtained. It was held as follows :-- (at P. 468 of AIR)

"In the present control order there is no such provision as existed in the U. P. Coal Control Order. Provisions of that Control Order bear no analogy to the provisions of the present Control Order. The policy underlying the order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the Courts to undo the mischief. Presumably, as appears from the different forms published in the Manual, there are directions and rules laid down by the Central

Government for the grant or refusal of permits.

Thus, the aforesaid case is not helpful to the petitioners. The other cases relied upon by the petitioners deal with principles or guidelines for determining as to whether particular provision is putting unreasonable restriction or not. There is no controversy as to the guidelines. After considering the provision of the Transit Rules it is clear that its object is to regulate the transport of the forest produce with object to checking illegal telling and removal of the trees. The grant and renewal of permit under the rules has to be guided by this policy as held in the case of Harishankar Bangla (*supra*). As such in my considered view the transit rules does not impose unreasonableness restriction and the rule is intravires.

32. The last point advanced on behalf of the petitioners is also devoid of any substance. The Bihar Forest Produce (Regulation of Trade) Act has been enacted, as evident from the object and perusal of the different provisions of the Act, for the purpose of providing monopoly to the State in trade of specified forest produce and the Bihar Saw Mills (Regulations) Act has been enacted to control the activities of the Millers of the Saw Mills. The Transit Rules control the transit of forest produce from the place of its cutting to the place where it is transported for consumption or other use. There is no provision in the aforesaid two Acts for controlling the transit from cropping point to the Saw Mills or to other place for consumption and other use. Thus, the rules cannot be held to be impliedly repealed by virtue of the aforesaid two Acts.

33. In the result, there is no merit in this application and the same is dismissed. There shall be no order as to costs.

M.Y. Equal, J.

34. I agree.