

**(1986) 05 AHC CK 0022**

**In the Allahabad High Court**

**Case No :** Writ Petition No. 901 of 1984 (Connected with W. P. No. 6168 of 1983 and several other petitions)

Sitapur Packing Wood Suppliers, Sitapur

APPELLANT

Vs

State of U.P. and Other

RESPONDENT

---

**Date of Decision :** 16-05-1986

**Acts Referred:**

Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978 — Rule 28, 4, 5

**Citation :** (1986) 05 AHC CK 0022

**Hon'ble Judges :** Kamleshwar Nath, J and D.S.Bajpai, J

---

## **Judgement**

D. S. Bajpai, J.—In this bunch of 78 Writ Petitions, under Article 226 of Constitution of India, validity of Rules 5 and 28 of U. P. Transit of Timber and other Forest Produce Rules, 1978, (For short, the Rules) is challenged. Consequently, there is a prayer to strike down those Rules by Writ of Certiorari and for a Writ of Mandamus to command the opposite parties, namely, State of U. P., and the concerned officers of the Forest Department, not to realise transit fees or impose penalty upon the petitioners. For sake of convenience, Writ Petition No. 901 of 1984 has been treated to be the leading case ; consideration has also been given to the points arising in other Writ Petitions as well.

2. The petitioners carry on trade in timber at various places; most of them are proprietors or Partnership Firms dealing in wholesale business, and a few of them are also Commission Agents who purchase timber for others.

All these purchases are made from the private owners of trees/Forests or of the forest produce brought by them into market yard. The purchases are made within the market yard of different Mandi Samitis, situated at different places, constituted under U. P. Krishi Utpadan Mandi Adhiniyam, 1964. The petitioners thereafter sell the timber to other persons within the market yard and further arrange to transport the sold timber to the purchasers at different outstations, outside the market yard of origin. When the goods thus sold and transported move out of the market yard and are on their way, the vehicles, mostly trucks,

are intercepted by the staff of the Forest Department of Government of U. P. and are required to produce passes under Section 4i of the Indian Forest Act, 1927 (For short, the Act). If they do not carry the requisite pass, a transit fee, as prescribed under Rule 5 of the Rules, is charged from them. In addition to the fee, penalty, as alleged by the petitioners, is realised from them under Rule 28 read with Section 42 of the Act. It is this levy of transit fee and imposition of penalty, in default of holding a transit pass, which is under challenge in these petitions.

3. In reply to the most of the Writ Petitions, counter affidavits have been filed, in one case, namely, Writ Petition No. 5601 of 1985, a rejoinder affidavit has also been filed.

4. We have had the benefit of considering elaborate arguments submitted on behalf of the petitioners by S/Sri K. B. Sinha, Hari Om Singh, and S. M. K. Chowdhary ; other learned counsel for the petitioners, e. g., Sarvsri Satish Chandra Sitapuri and Shafiq Mirza and S. P. Shukla, have adopted the same arguments.

5. We have also the benefit of hearing the lucid arguments of the learned Advocate General of U. P., Sri V. B. Upadhya assisted by Sri Rakesh Sharma. We have been taken through the relevant material contained in the records.

6. The petitioned case is that a pass is required to be obtained only by the owner of the trees or forest produce. As soon as the forest produce is sold by the owner to a trader, the latter is under no obligation to obtain a pass ; and if that be so, it would follow that no penalty could be imposed upon them for failure to possess a pass. It is also urged in the petitions that the transit fees can be charged only at one point.

7. A faint effort was made by Sri Hari Om Singh to contend that the State Government did not possess constitutional competence to impose transit fees. Reference is made to Entry No. 47 read with entry No. 17A of List III, contained in Schedule VII of the Constitution of India, and it is urged that although Entry No. 17A mentions "Forests", it does not go on to specify transit of Forest produce or transit fee, as an item on which the State Government could legislate. We find no force in this contention because the expression "Forests" in Entry No. 17A of List III of Schedule VII must be interpreted in its widest scope and in that sense it would certainly include the power to regulate transit of forest produce. The regulatory measure could include the power to levy fees, subject to other requirements of the law being satisfied, because Entry No. 47 of the said list enables the State Government to levy fees in matters included in the List. It has been held in the case of *R. S. Joshi v. Ajit Mills Ltd.* (1977 SC 2279) that each entry in the List of Schedule VII of the Constitution has to be given widest amplitude and each general word should be held to extend to all ancillary and subsidiary matters which could clearly and reasonably be said to be comprehended in it. In the case of *M/s Hoechst Pharma ceuticals Ltd. v. State*

of Bihar & others (1983) 4 SCC 45, it has been held in Para 72 that the entries in the three Lists must be read in a broad and liberal sense and must be given the widest scope which their meaning is fairly capable of because they set up the machinery of the government.

8. Learned counsel for the petitioners referred to Section 41 (2) (c) of the Act and rely upon the Forms contained in Schedules A and B to the Rules to support their contention that it is only the owner of the trees or forest produce who is liable to obtain a pass. It will be useful to extract the relevant portions of Section 41 as follows :

"(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 rules to regulate the transit of all timber and other forestproduce.

(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 forestproduce may be imported, exported or moved into, from or within the state ;

(b) prohibit the import 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."

9. The language of Section 41 (1) of the Act unmistakably shows that control of all timber and other forest produce in transit by land or water, is vested in the State Government. The subsection also says that the State Government may make rules to regulate the transit of all timber and other forest produce. The power contained in these provisions is not confined to the source of the forest produce. The transit "of all timber and other forest produce" may be regulated. Expression "forest produce" is denned in Section 2 (4) to include under clause (a) the things specified therein "whether found in, or brought from, a forest or not." The specified things include "timber". It is clear, therefore, as urged by the learned Advocate General, that clause (a) of Subsection 4 of the Act takes within its sweep all kinds of timber whether found inside a forest, whether brought from a forest, as well as timber which is neither found in nor brought from a forest. Clause (b) of Subsection (4) deals with things found in or brought from a forest and then confirms the forest produce into four classes of things, of which subclause (i) includes "trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees." Timber as defined in Section 2 (6) of the Act includes "trees when they have fallen or have been felled and all wood whether cut up or fashioned or hollowed out for any purpose or not." A noticeable feature in these definitions is that neither timber nor forest

produce, as dealt with by the Act, is confined to the owner thereof ; it would include anybody who has the timber or forest produce in his possession for the time being.

10. The provisions of Section 41(2) of the Act are only illustrative of the general powers contained in subsection (1) of that section. The opening words of subsection (2) : "in particular and without prejudice to the generality of the foregoing power such rules may.....", make it clear that the general powers contained in subsection (1) of Section 41 of the Act are not curtailed by the provisions of subsection (2) of that section.

11. Clause (a) of Section 41 (2) of the Act permits rules to be framed to prescribe routes by which alone timber or forest produce may be "moved into, from or within the State." Clause (b) authorises framing of rules which may prohibit the movement of timber or other forest produce without a pass or otherwise in accordance with the conditions of such pass. Clause (c) authorises framing rules for "issue, production and return of such passes and for the payment of fees therefor." these provisions of Section 41, it is patent, are not confined in their application to the owner of trees, timber or forest produce, they are of general application. Chapter I of the Rules bears the title "Transit of Timber and other Forest Produce by Land"^. Rule 3 runs as follows :

"3. Regulation of transit of forest produce by means of passes. No forest produce shall be moved into or from or within the State of Uttar Pradesh except as hereinafter provided, without a transit pass in the form in Schedule A 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 conditions of such pass or by any route or to any destination other than the route or destination specified in such pass : Provided....."

This rule contains a total prohibition on movement of forest produce into or from or within the State of U. P., as envisaged under Section 41 (2) (b) of the Act, without a transit pass. Strength is sought to be drawn by the learned counsel for the petitioners from the prescribed form of the transit pass as set out in Schedule "A" to the Rules. Serial No. 1 of Schedule "A" specifies locality of origin consisting of name and situation of the forest and its owner. Serial No. 2 refers to the name and address of the owner of the forest produce. Then, there are other details regarding the destination, the route, the depot where the forest produce must be exhibited for checking. It is urged on behalf of the petitioners that persons, other than the owner of the forest produce, are not in a position to furnish the particulars required under Serial Nos. 1 and 2. For same reason reliance is placed upon the application form for a pass in Schedule "B" of the Rules. A reference to Schedule "B" is found in Rule 4 of the Rules. The relevant portion of Rule 4 runs as follows :

"(1) The following officers and persons shall have power to issue passes under these rules

(a) for forest produce belonging to Government or not owned by any other person, the Conservator of Forest, the Divisional Forest Officer, the SubDivisional Forest Officer or any other officer authorised in this behalf in writing by the Conservator of Forest or the Divisional Forest Officer.

(b) for forest produce owned by any person, such person or his agent if so authorised in writing by the Divisional Forest Officer :

(i) provided that any person who desire to obtain a transit pass or authorisation to issue passes under clause (b) of subrule (1) above, shall apply in the form in Schedule "B" and the Divisional Forest Officer may, before issuing the transit pass or authorisation to issue such passes, conduct such inquiry and call for such information as considered necessary.

(ii) ??????????

Serial Nos. 1 to 3 of application form in Schedule "B" refer to name, transfer name, and full address "of the applicant."5 Clearly, the particulars of Serial Nos. 1 to 3 may be given by the applicant whether he is the owner or not of the forest produce. Emphasis is laid on serial Nos. 4 & 5. Serial No. 4 requires details of land from which the produce is to be brought including Khasra numbers if the land is in a holding serial No. 5 requires the details of trees of which the produce is proposed to be brought. Learned counsel for the petitioners say that these details can be given only by the owner of the land or trees and cannot be given by the traders who merely purchase the timber or forest produce from the owners. The contention of learned Advocate General is that although there may be some difficulty for a trader to furnish these particulars, it should not be impossible for him to do so if he has obtained the things from the owners of the land or trees. What is more important, according to the learned Advocate General, is that form in Schedule "E" does not apply to each and every applicant for issue of a pass, but applies to a person who wants a pass or an authorisation to issue a pass under clause (b) of Rule 4(1).

12. As the language of subrule (1) stands, three constructions are possible. Clause (a) of Rule 4(1) deals with issue of passes in respect of forest produce not belonging to the private persons ; those passes may be issued by officers of the Forest Department specified in the clause. Clause (ft) of the Rule deals with issue of passes in respect of forest produce belonging to a private person; those passes may be issued by the owner of the produce or his agent, if so authorised in writing by the Divisional Forest Officer. Subrule (1) that far does not specify who may apply for a pass and in what form the application must be made. The provision in this regard is to be found in subclause (i) to clause (6).

13 This subclause is capable of being read in three ways by laying emphasis on different portions thereof:

(1) "Provided that any person who desires to obtain a transit pass.....shall apply in form in Schedule

"B"....."

(2) "Provided that any person who desires to obtain a transit pass.....under clause (b) of subrule (1) above, shall apply in form in Schedule "B"....."

(3) "Provided that any person who desires to obtain.....authorisation to issue passes under clause (b) of subrule (1) above shall apply in the form in Schedule "B"....."

On the face of it, the form in Schedule "B" cannot be applied to a mere application for an authorisation to issue passes. The form requires the details of land or trees whose produce is to be brought, together with the destination where the produce is proposed to be taken. It is clear enough that these particulars are irrelevant for the purposes of a mere authorisation to issue a pass; they are relevant for issue of a transit pass itself. It is not possible, therefore, to accept the contention of the learned Advocate General that the form in Schedule "B" has to be used for an application for issue of an authorisation to issue a pass. Construction No, 3 must be excluded.

14. It will be noticed that subclause (i) (as well as subclauses (ii) and (iii) ) have been placed in continuation of clause (b); they are not placed :n continuation of clause (a). It would be appropriate, therefore, to construe subclause (i) to apply to the particular matter dealt with in clause (6). In that situation, construction according to No. 2 would be appropriate. If construction No. 1 was to be adopted, the subclause would govern both clauses (a) and (b). That would not be appropriate because subclause (i) has been placed, as indicated above, in continuation of clause (b) and not in continuation of clause (a). The intention of subclause (i) seems to be that whenever a person, who is the owner of a forest produce, applies for a pass, he must do so in form in Schedule "B". For persons who are not owners of forest produce and to whom clause (a) applies, there is no prescribed form for making an application.

15. It is not possible, therefore, to interpret the provision of form in Schedule "B" of the Rules to signify that each and every application must be made in that form, there is no prohibition for the persons other than the owner of the forest produce or his agent from making a simple application containing such details as he can reasonably be expected to furnish for issue of an effective pass. The purpose of a transit pass, contemplated under Section 41 of the Act, is to prescribe the route by which the forest produce must be transported and the payment of the fees therefor. The indication of the station from where the movement of the goods commences, and the station where the movement must terminate, can definitely be given by the person who despatches or transports the forest produce whether he is the owner thereof or not.

16. It also appears to us that the provisions of the Act govern the Rules and not viceversa, unless there is some vagueness in the provisions of the Act itself. In the case of Onkar Lal Nand Lal v. State of Rajasthan (1985) 4 SCG 404, it has

been held that the expressions used in rules and Forms should be construed in consonance with the Act. Since the provisions of the Act apply not only to the owners of timber and forest produce, but also to every person who may be in possession thereof for the time being, the requirements of the Forms in Schedules "A" and "B" to the Act cannot be construed to limit the wide scope of the Act. The contents of the Forms, though applicable to the owners of the forest produce, cannot be construed to curtail the wide provisions of the Act which extend to persons other than the owners of the forest land, forest produce, or timber.

17. The learned Advocate General also referred to the case of *Virji Lalji Patel and Company v. State of Madhya Pradesh* (1965 MP 211) where the State Government's power to make Rules to regulate the transit of forest produce and, in particular, the power to make rules for issue, production, and return of such passes and for payment of fees therefor (vide Para 25), was upheld. That was a case of a forest contractor, who extracted timber from State Forest, taken by him on lease, and transported it from forest to his own Saw Mill after passing through check posts which issued receipts of checking. When after converting the timber into planks, he wanted to transport the planks by railway wagons, the railway authorities demanded a transit pass. His challenge to the demand of transit pass was rejected by the High Court. The Noticeable feature of the case is that the forest produce had not only been transported from the forest site to the Saw Mill, but when it was converted into the form of planks, its further transport from the Saw Mill to the railway station was subjected to the requirement of issue of a transit pass.

18. This situation also meets the contention of learned counsel for the petitioners that passes and transit fees, in connection thereof, can be issued or charged only at one point, namely, the point of movement by the owner of the forest produce. The control of the State Government over the transit of all timber and forest produce extends, under Section 41 (1) of the Act, to every time when a fresh transit thereof takes place. The route, which may be set out in a pass under clause (a) of Section 41 (2) of the Act, is not limited by number, for every movement within the whole of the State, routes may be prescribed. It would appear from the preamble of the Act also that the object of the Act is to regulate all transit of forest produce. It runs as follows :

"Whereas it is expedient to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce, it is hereby enacted as follows ....."

The provision clearly cannot be confined to control of transit of forest produce only at one point, namely, by the owner of the forest produce to its destination whether for sale to a trader or otherwise.

19. We are satisfied, for the reasons indicated above, that the power to regulate transit of timber under the Act and the Rules and for that purpose to levy fee

therefor, is not confined to the transit of the timber or forest produce by the owner thereof, it would also extend to those traders who arrange to transport for any reason.

20. Learned counsel for the petitioners urged that there is an inconsistency between the provisions of Rule 5 and the power conferred by clause(c) of Section 41 (2) of the Act. The latter, it is pointed out, deals with "passes and for payment of fees therefor"<sup>1</sup>, but the former prescribes payment of transit fee on forest produce. The contention is that clause (c) of Section 41 (2) of the Act authorises issue of passes and for charging fees for issue of passes, but in practice Rule 5 is utilized for charging fee for forest produce. The contention of learned Advocate General is that while the authority to issue passes, on payment of certain fee, flows in particular from clause (c) of Section 41 (2) of the Act, without affecting the generality of the powers under Section 41 (1) of the Act, Rule 5 only provides for the method of computation of fee for the pass. Reliance is placed upon the heading of Rule 5 which, so far as relevant, runs as follows :

"Fees payable for different classes of passes. At the Check Chowki or depot established under Rule 15 and specified under proviso (ii) to clause (b), subrule (1) of Rule 4, the forest produce alongwith the two copies of the pass (duplicate and triplicate) shall be produced for examination under subrule (4) of Rule 6 and for payment of transit fee on the forest produce calculated at the following rates ; corresponding receipt shall be granted in the form given in Schedule "C" :

(i) per lorry load of timber or Rs. 5.00

other forest produce. per tonne

of capacity.

(ii) per cart load of timber Rs. 2.50

or other forest produce,

(iii) ?????????????????????????????????????????????????????????????.

We would agree with the learned counsel for the petitioners that the provision "payment of fees therefor" in clause (c) of Section 41 (2) of the Act is confined to the fees payable at the stage of issuing passes. The word "therefor" clearly relates to the word "passes" and, therefore, the fees contemplated under that clause are the fees for issue of passes. These passes are issued under Rule 3 of the Rules and it is obvious from the language of Rule 5 that the person holding a pass, issued under Rule 3, is entitled to proceed with the forest produce, supported by the pass, to the next checkpost or depot established under Rule 15. The question of paying further fee, which is described in Rule 5 as "payment for transit fee" arises at the stage when the goods are produced at the checkpost or depot. The fee, thus charged at that stage, is transit fee on the forest produce and distinct from the payment of fee for passes under clause (c) of Section 41 (2) of the Act, We would, therefore, agree with the learned counsel for the

petitioners that the transit fee, prescribed under Rule 5, does not fall within the fees for passes provided for under clause (c) of Section 41 (2) of the Act, but we are of opinion that the transit fee aforesaid falls within the general powers of control over transit under Section 41 (1) of the Act. How far the transit fee is otherwise valid, is a different question, the constitutionality of imposing the transit fee, in our opinion, is adequately established.

21. Learned counsel for the petitioners then urged that the transit fee under Rule 5 is a fee on forest produce which again is not permissible. It may be mentioned that under Section 39 of the Act, duty may be levied by the Central Government on timber and other forest produce specified under that section. If, therefore, the transit fee, under Rule 5, is a fee on forest produce, it may be outside the competence of the State Government. We are of opinion, however, that the transit fee is not a fee on the forest produce, it is a fee on transit of forest produce, even as the fee for passes, under clause (c) of Section 41 (2) of the Act is fee on passes for transit, and not on transit of forest produce.

22. It is lastly urged that different rates of transit fees have been prescribed for different variety of transport under Rule 5, although in the ordinary nature of things fees ought to be uniform. There is no basis for this contention. In the first place, the sliding rates of fees, prescribed in Rule 5 correspond to the capacity of the vehicle by which the timber or forest produce is transported the fee being higher for the larger capacity transported and lower for the lower capacity of transport. This seems to be a fair classification, for the purposes of distinguishing the incidence of fees the bigger carrier being liable to pay higher amount than the smaller carrier which is liable to pay smaller fee. In the second place, lack of uniformity in the scale of fees, by itself, has never been recognised to be a criterion for treating the fees to be in the nature of a tax. In the case of *Sudhindra Thirtha Swamiar and others v. The Commissioner for Hindu Religious and Charitable Endowments, Mysore and another* (AIR 1963 Supreme Court 966) a Constitution Bench of the Supreme Court held as follows :

"It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may."

The classical example of valid sliding scales of fee is the court fees payable in connection with litigation in Courts. (See the case of *The Secretary, Government of Madras, Home Department and another v. Zenith Lamps and Electrical Ltd.*, (AIR 1973 SC 724).

23. There is, therefore, no lack of Constitutional competence in providing for transit fee as set out in Rule 5. This brings us to the last question on the subject. The question is whether, all said and done, the transit fee, prescribed under Rule 5, is otherwise valid. The ground of attack is that this fee is not supported by the principle of quid pro quo. It is the specific case of the petitioners that no service is rendered in lieu of fee to any person, muchless, to the person from whom transit fee is charged. The reply of the opposite parties to this plea may now be noticed.

24. In Writ Petition No. 5459 of 1984 the reply contained in Para 38 of the counter affidavit is that because of the provision of passes and the checkposts providing property marks, security of the property of real owner, in the forest produce, is ensured, irrespective of assistance rendered in other matters. That was stated to be the service rendered. The same pleading, in reply, was made in Writ Petition No. 5006 of 1984.

25. In para 41 of Writ Petition No. 1461 of 1984 it was stated that no service was rendered in lieu of the transit fee. The reply in para 35 of the counter affidavit was that timber or other forest produce could not be transported unless transit pass is obtained in accordance with Rule 3 of the Rules. The same reply was given in the counter affidavits in Writ Petition No. 2419 of 1984, 2665 of 1984 and the leading case, namely, Writ Petition No. 901 of 1984.

26. In Writ Petition No. 5007 of 1984 it was stated in para 25 that no service had been rendered ; reply in para 18 of the counter affidavit was that the said allegation was not correct and that in every circumstance the petitioner was liable to pay transit fee. The same reply is to be found in counter affidavits to Writ Petitions Nos. 5437 of 1984, 5720 of 1984 and 5921 of 1984.

27. In para 30 of Writ Petition No 5601 of 1985 the pleading of rendering no service was made, in para 24 of the counter affidavit it was stated in reply as follows :

"The object of regulation of transit of forest produce by means of passes is not only to realise fee on forest produce, but to adjudge its legality also. For this purpose checkposts at different places have to be established, and a huge amount is needed for payment to staff employed thereat. In view of meeting this expenditure, transit fee has been levied by the State Government."

28. It is not necessary to mention that in several other writ petitions a similar case was set up by the petitioners, but there is practically no reply therefor in counter affidavit. That, however, is not very material because the question of legality of transit fees is being considered for the whole bunch of writ petitions which are under judgment. It will be noticed that, in substance, the stand of the opposite parties., regarding the service expected to be rendered in lieu of fees, is that the persons transporting timber have no option but to pay transit fees and obtain passes under the rules, that security of the property of the real owner in the forest produce is ensured by the provision of passes, checkposts and

property marks, and that the transit fee has been levied by the State Government in order to meet the expenditure involved in establishing and maintaining checkpoints for the purposes of "adjudging the legality" of the forest produce. In addition to this, the learned Advocate General has further contended that since the State Government exercises absolute control on transit of timber and forest produce, under Section 41 (1) of the Act, the privilege of issuing a pass for transit is itself a service rendered, for which transit fees could be levied.

29. In this connection the learned Advocate General has referred to a decision of the Supreme Court in the case of *Sreenivasa General Traders and others v. State of Andhra Pradesh and others*, (1983) 4 Supreme Court Cases 353 to contend that the theory of quid pro quo, as a justification for levy of fees, has undergone enormous change with lapse of time. Reliance has been placed upon the following observations in Para 31 :

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax; In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render" specific services to a specified area or class, it may be of no consequence that the State may ultimately and indirectly be benefitted by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the service rendered."

It will be noticed at once that despite change in the traditional view on the principle of quid pro quo for a fee, the requirement of quid pro quo has not been done away with. The basic view in the decision is that the levy of a fee is conditioned by the fact that there must be "by and large" a quid pro quo. It is significant that the decision was rendered in a case where a subsisting market fee of 0.50 Paise per 100/ rupees had been enhanced to Re. 1/. What was under challenge was the increase in the fee and not the competence to levy a fee. If one may say so, the decision extended the seventh conclusion on the basis of *Kewal Krishna Part's* case, reported in (1980) 1 SCC 416 as summarised in the case of *Ram Chandra Kailash Kumar v. State of U. P. & Others* (1980) Supplement Supreme Court Cases 27, and it was pointed out that the conclusion that a good and substantial portion of the fee collected, say in the neighbourhood of 2/3rd or 3/4th, must be shown, with reasonable certainty, as being spent for

rendering services for which fee is imposed, was only an obiter. The basic feature, however, that a fee must be supported by service rendered to those from whom fee is charged, as a principle of quid pro quo, running through a chain of decisions of the Supreme Court, was sustained. The only benefit which can be drawn by the opposite parties from the decision in the case of *Sreenivass General Traders and others v. State of Andhra Pradesh and others* (Supra) is that the service rendered need not be established with mathematical exactitude and it would be enough if the authorities are able to establish a broad and reasonable link between the fees and the service rendered. In other words, a reasonable relationship between the levy of the fee and the services rendered is adequate.

30. The question then is whether any reasonable relationship between the levy of the fee and services rendered is established in these cases. We have set out the defence of the opposite parties in this regard and it is absolutely clear to us that the opposite parties have failed to establish that they render any service, muchless a reasonable service, to the petitioners for charging transit fees. To say that the persons transporting timber have no option but to pay the transit fee and obtain passes is to beg the question. The alleged "security of the property" for the real owner of forest produce being ensured by the levy of transit fee, is not at all made out. No rational nexus is shown between the fees and so-called, "Security of the property". The charge of transit fee, in order to meet expenditure involved in establishing and maintaining checkposts for the purpose of "adjudging the legality" of the forest produce, (whatever that expression may mean), is clearly for the benefit of the administration and not for the benefit of the owners or transporters of the forest produce. The further contention of the learned Advocate General that in view of absolute control on transit of timber and forest produce, under Section 41(1) of the Act, the privilege of issuing a pass for their transit is itself a service, can only be partially correct, namely, insofar as it is applied on the property which belongs to the Government exclusively in respect of which the government have absolute and unfettered rights, privileges and powers. The most significant decision on these angles of the case is to be found in the case of *The Indian Mica and Micanite Industries Ltd. v. State of Bihar and Others* (1971 SC 1182) decided by a constitution Bench of the Supreme Court. The view expressed in Para 14 of the decision is as follows :

"Generally speaking by granting a licence the State does not confer any privilege or benefit on any one. All that it does is to regulate a trade, business or profession in public interest. There may be cases where a Government which is the owner of a particular property may grant permit or licence to someone to exploit that property for his benefit. Such a right may be given for consideration. It is only in those cases that a licence or permit is a conferment of a benefit or a privilege and not in the case of grant of a licence for carrying on any ordinary trade, business or profession."

It is clear, therefore, that except in a case where the Government is the owner of

a particular property, a grant by the government of licence or a permit is not conferment of a benefit or privilege. In those cases only where the government is the owner of the forest produce, it may be permissible to levy a transit fee as specified in Rule 5 of the Rules. In all other cases of grant of licence or permit carrying on any ordinary trade, business or profession, it does not constitute conferment of any privilege or benefit in the sense of a quid pro quo.

31. It also appear from the observations contained in Para 17 of the decision in *The Indian Mica and Micanite Industries Ltd. v. State of Bihar and others* (Supra) that by an expenditure incurred by the government for establishing its own checkpoints, in order to keep a close and effective supervision over the movement or conversion of goods, the state would not be rendering service to the consumer and would be merely protecting its own rights.

32. All the petitioners have emphasised that on all the transactions to purchase and sell, within the market yard, they have paid fee under the U. P. Krishi Utpadan Mandi Adhiniyam 1964 and, therefore, they are not liable to pay any further fee under the Act. There is no worth in this contention. The two statutory provisions are independent of each other, operating within their own fields of competence. The same principle would apply to the fact that road tax is paid by the transporters who use the roads. The levy of transit fee is independent of and in addition to those fees and taxes paid by the petitioners.

33. On a careful consideration of all the aspects of the dispute, we are of opinion that the levy of transit fees, under Rule 5 of the Rules, in the present cases, is invalid. In these writ petitions, we are concerned only with private owners of timber or forest produce. We are not concerned with forests owned exclusively by the government or of their produce. For the purposes of the present writ petitions we, therefore, hold the levy of transit fees, under Rule 5 to be invalid.

34. The next question relates to the validity of Rule 28 of the Rules which runs as follows :

"Penalties for breach of Rules (1) Whosoever contravenes any of the provisions of these rules shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both."

The learned Advocate General has fairly conceded that the quantum of punishment, set out in subrule (1) of Rule 28, is in excess of the penalty, set out by the Legislature, in Section 42 (1) of the Act, which runs as follows :

"The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both."

It is plain enough that while Section 42(1) of the Act provides for an imprisonment for a maximum period of Six months or a fine for a maximum amount of Rs. 500/, Rule 28 prescribes a maximum punishment of imprisonment

for one year or of fine upto Rs. 1,000/. The learned Advocate General, however, says that it is not necessary for this Court to strike down Rule 28, for penalty has not been levied in any case; all that has been realised is compensation under Section 68 of the Act. This contention is only partially correct because atleast in one case, namely writ petition No. 6168 of 1983, the amounts realised by the employee of the department under receipts, Annexures 12 & 13, are described as penalty and not as compensation (Pratihar). Admittedly, the penalty has been imposed without a trial and, therefore, it may not be said that the penalty has not been imposed, although, it is true that in a number of cases the amount realised is described as compensation of which provision may be found in Section 68 of the Act. We are of opinion that, unless otherwise protected, Rule 28 (1) of the rules would deserve to be struck down.

35. Learned Advocate General, however, has urged that instead of striking down the rule, the doctrine of reading down may be applied, and it may be declared that the rule would be operative only to that extent of the penalty as is set out in Section 42 (1) of the Act. There seems to be substance in this contention of the learned Advocate General.

36. The intention of the Legislature in Section 42(1), of the Act is clear. The contravention of rules, framed under Section 41 of the Act, was intended to be punishable. The maximum punishment which the rules could prescribe could be imprisonment upto six months and fine upto

Rs. 500/. The imposition of penalty itself was subject to prescription by rules. This provision thus is in two parts :

- (1) The requirement of making contravention of Rules, framed under Section 41 of the Act, to be punishable by making rules, and
- (2) The punishment, which the rules might prescribe, could not exceed six months for imprisonment or Rs. 500/ for fine.

Rule 28 (1) similarly operates in two fields :

- (1) The first portion "whosoever contravenes any of the provisions of these rules shall be punishable" prescribes that the contravention of the Rules would be punishable as intended in the first part of Section 42 of the Act, and
- (2) The punishment which could be awarded by virtue of the prescription in the first part of the Rule could extend to one year or to fine upto Rs. 1,000/.

This provision is in excess of the second part of the legislative intent set out in Section 42 (1) of the Act.

37. The two portions of the Rule, in our opinion, are severable and since the legislative intent in Section 42(1) of the Act was to confine a penalty of imprisonment to a maximum of six months and to that of fine to a maximum of Rs. 500/, the prescription in Rule 28 may fairly be read subject to those limitations. This is what the principle of reading down the statute signifies. In the

case of All Saints High School. Hyderabad and others, v. Government of Andhra Pradesh and others, (1980) 2 Supreme Court Cases 478 at pages 532 and 533, the Supreme Court in Para 112 referred to the following passage from Maxwell on Interpretation of statutes :

"Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumspection of the field of operation."

The court then held as follows :

"The Court has in several cases adopted the principle of reading down the provisions of the statute. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable^ if read literally, of applying to matters beyond the relevant legislative power, the court will construe it in a more limited sense so as to keep it within power."

We think that in this case it is reasonably possible to construe the second part of Rule 28(1) of the rules to confer the power of punishment only to the extent indicated in Section 42(1) of the Act, namely, "imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500/ or with both/" It goes without saying that since the quantum of punishment, prescribed by Rule 28(2) of the rules, follows the quantum cited in subrule (1) of Rule 28, reading down of the latter would have corresponding effect on the former. We are not inclined, for reasons indicated, to hold Rule 8 to be ultra vires. We hold that the rule must be read down as indicated above.

38. In Writ Petition No. 5459 of 1984 it was stated in Para 43 that the rules were invalid because there is no mention in the notification whereby the Rules were published, that they were laid before the Legislature as required by Section 78 of the Act. The reply in the counter affidavit is that there is a presumption of regularity in procedure and that mention of the Rules being laid before the Legislature in the notification, was not necessary. Learned counsel for the petitioners have not cited any law before us on the subject. We think that in the absence of any statutory requirement, it was not necessary that the fact of the rules, being laid before the Legislature, should be mentioned in the notification whereby the rules are published.

39. Besides the levy of the transit fee, imposition of penalty has been challenged in these Writ Petition. It goes without saying that since the levy of fees is invalid, imposition of penalty cannot stand for a moment. The learned State Counsel has taken a stand that the amount described by the petitioners as penalty, was actually not penalty but compensation under Section 68 of the Act. This defence

has a factual aspect on which the parties' pleadings deserve to be scrutinised.

40. In all the Writ Petitions the imposition has been described as penalty. No counter affidavit has been filed in Writ Petition Nos. 2369 of 1984, 2398 of 1984, 2492 of 1984, 4357 of 1984, 4535 of 1984, 4633 of 1984, 4629 of 1984, 4820 of 1984, 4942 of 1984, 356 of 1985, 1257 of 1985, 1709 of 1985, 2267 of 1985, 2681 of 1985, 3924 of 1985, 4192 of 1985, 6659 of 1985, and 49 of 1986, 142 of 1986, 159 of 1986, 205 of 1986, 370 of 1986, 371 of 1986, 372 of 1986, 374 of 1986, 1013 of 1986, 2208 of 1986 and 5833 of 1984, to challenge this pleading of the respective petitioners. So far as these cases are concerned, therefore, we must hold that the imposition was a penalty which cannot be sustained. For sake of brevity we will refer to this set of petitioners as Group "A".

41. In Writ Petition Nos. 6168 of 1983, 1585 of 1984, 1602 of 1984, 2538 of 1984, 2647 of 1984, 2655 of 1984, 3369 of 1984, 3773 of 1984, 4159 of 1984, 4941 of 1984, 5006 of 1984, 5007 of 1984, 5021 of 1984, 5151 of 1984, 5307 of 1984, 5309 of 1984, 5345 of 1984, 5381 of 1984, 5382 of 1984, 5384 of 1984, 5459 of 1984, 5527 of 1984, 5720 of 1984, 5773 of 1984, 5921 of 1984, 627 of 1985, 785 of 1985, 850 of 1985, 1190 of 1985, 1800 of 1985, 1920 of 1985, 2144 of 1985, 4013 of 1985 and 5601 of 1985, although counter affidavits have been filed, but it has not been pleaded, on behalf of the opposite parties, that the amount imposed was not penalty but compensation. In these cases also the imposition must be held to constitute penalty and must be struck down. We will refer to this set of writ petitions as Group "B".

42. In the counter affidavits in Writ Petition Nos. 901 of 1984, 1411 of 1984, 2027 of 1984, 2419 of 1984, 2665 of 1984, 4169 of 1984, 4627 of 1984, 4623 of 1984, 5437 of 1984, 6068 of 1984, 133 of 1985, 341 of 1985, 5721 of 1985, 1991 of 1985, 3827 of 1985 and 4974 of 1984, the imposition has been described as compensation under Section 63 of the Act. The petitioners have not filed a rejoinder affidavit to rebut this statement in the counter affidavits. We must, therefore, proceed on the basis that the amounts realised were by way of compensation under Section 68 of the Act. We will refer to this set of writ petitions as Group "G".

43. The relevant portion of Section 68 of the Act is as follows :

"(1) The State Government may, by notification in the Official Gazette, empower a forest Officer

(2) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) ??????????????.

It will be seen that Section 68 of the Act deals with compounding of offences and clause (a) of subsection (1) authorises the competent person to accept "a sum of money by way of compensation" for "any forest offence" which might have been suspected to have been committed. The Offence for which compensation has been accepted is of transporting forest produce or timber without a pass under Rule 3. Section 2(3) of the Act defines forest offence to mean "an offence punishable under this Act or under any rule made thereunder." It is clear from Section 42 of the Act that contravention of rules, framed under that section, is punishable by imprisonment as well as fine. Since Rule 3 requires a transit pass to be taken, a failure to take a transit pass, coupled with transport of forest produce or timber, constitutes a forest offence. It may, therefore, be compounded under Section 68 of the Act and compensation money for commission or suspected commission of such offence, may be accepted. Subsection (3) of Section 68 of the Act further says that the sum of money which may be accepted as compensation, under clause (a) of subsection (1), shall in no case exceed a sum of Rs. 500/. The result, therefore, is that since in all Writ Petitions of Group "C" the compensation money paid does not exceed Rs. 500/, the imposition must be upheld.

44. These are all the points which have been raised in these writ petitions.

45. To sum up, we hold and direct as follows :

(1) Rule 5 of U. P. Transit of Timber and Other Forest Produce Rules 1978, is Constitutionally valid, but the levy of transit fee against all the petitioners is invalid. Since it is open to the State Government to support the levy of transit fee by rendering service as quid pro quo, there is no question of striking down the rule.

(2) Rule 28 (1) of the Rules is protected by the Doctrine of Reading down the statute and we hold that the penalty prescribed thereby shall be read down to signify imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500/ or both.

(3) In all the writ petitions of Groups "A" and "B" the imposition of the amounts, specified in each writ petition, and their realisation as transit fee and/or penalty (whether described as penalty or compensation in the receipts issued by the Forest Department) by the opposite parties, is quashed, the said amounts shall be refunded to the respective petitioners, within three months from the date of receipt of an application for refund to be made by the concerned petitioner to the competent authority.

In Writ Petition of Group "C", the imposition of the amounts, specified in each writ petition and realised as transit fee, but not the amount realised as compensation money, is quashed, the said amounts shall be refunded to the respective petitioners within three months from the date of receipt of an application for refund to be made by the concerned petitioner to the competent authority.

(4) The amounts deposited by the petitioners, in compliance of this Court's interim orders, shall also be refunded to the respective petitioners within three months from today.

(5) The opposite parties shall not realise transit fee, under Rule 5 of the Rules, and shall not levy penalty, under Rule 28, for failure to obtain a transit pass, under Rule 3, hereafter, except in accordance with law as indicated in the body of this judgment.

46. The parties shall bear their costs of these writ petitions.