

(2002) 07 AHC CK 0021
In the Allahabad High Court
Case No : C.M.W.P. No. 5339 of 2002

Sonebhadra Minor Mineral Lease/Permit Holders Association and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Forest Act, 1927 — Section 2(4)

Citation : (2002) 4 AWC 2791

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Yogesh Kumar Saxena, for the Appellant; Vinod Swaroop and S.P. Kesharwani and Vijay Singh, S.C., for the Respondent

Judgement

M. Katju and D. R. Chaudhary, JJ.—Heard counsel for the parties.

2. The petitioner No. 1 is an Association of Minor Mineral Lease Holders of Sonebhadra district, and the other petitioners are its members. They have challenged the validity of the U. P. Transit of Timber and other Forest Produce Rules, 1978. The validity of the Rules has been upheld by Hon'ble the Supreme Court in State of U.P. and Others Vs. Sitapur Packing Wood Suppliers etc.,

3. Learned counsel for the petitioners submitted that the U. P, Transit of Timber Rules will not apply to a Minor Mineral as it is not a forest produce. In this connection, Section 2(4)(b)(iv) of the Forest Act states that forest produce includes minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries) which are found in or brought from a forest. It follows that If the minor mineral excavated was not found in or brought from a forest as defined under the Forest Act, no transit fee can be charged from the petitioners.

4. We are not inclined to go into the question whether the minor mineral being excavated by the petitioners is found in, or brought from, a forest as that is a factual controversy and should be decided by the appropriate authority. We are

only making the legal position clear so that there may be no doubt in this connection. Hence the petitioners should approach the District Magistrate, Sonebhadra with a copy of this order and the District Magistrate, Sonebhadra after considering the material submitted before him should decide within one month whether the petitioner's minor mineral are forest produce u/s 2(4)(b) of the Indian Forest Act or not. If it is found that they are not forest produce, no transit fee shall be charged from the petitioners and the transit fee already realised from the petitioners shall be refunded within two months.

5. With the above observation, the writ petition is disposed of.