
(2002) 01 GAU CK 0008

In the Gauhati High Court

Case No : Writ Appeal No's. 309, 364, 374 and 600 of 1996 and 367, 368, 369, 370, 371, 372, 373, 375, 376, 377, 378, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410 and 411 of 1997

State of Assam

APPELLANT

Vs

Tumda Saw and Veneer Mills and Others

RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Assam Forest Act, 1891 — Section 3(3), 40(2)

Citation : (2002) 1 GLT 346

Hon'ble Judges : J.N. Sharma, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : A. Hazarika and A.M. Bujarbaruah, for the Appellant; S.K. Kejriwal, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—The instant batch of appeals raises a common question of law and arguments have also addressed on that footing. Consequently these appeals are being disposed of by this common judgment.

2. An ordinance under the name of the Assam Forest Regulation (Amendment) Act, 1994 (The Assam Ordinance No. XI of 1994) was promulgated by the Governor of Assam to amend the Assam Forest Regulation, 1891 (for short "regulation") and the same was published on 23rd November, 1994 and it came into force immediately from the date of publication. The said ordinance redefined the definition of "Timber" as originally envisaged under sub-clause 3 of Section 3 of the regulation.

3. The definition of "Timber" was defined under the regulation prior to amendment as under:

"Timber" includes trees when they have fallen or have been felled, and all woods whether cut up or fashioned or hollowed out for the purpose or not.

But by the said ordinance the definition of "Timber" was re-defined as follows:

"Timber" means trees when they have fallen or have been felled or all woods whether cut or fashioned or hollowed out for any purpose or not and includes trees when cut into pieces or sizes or peeled out or sliced out (veneer) for manufacture or plywood, block board or any other purposes or not.

4. The aforesaid ordinance was replaced by the Act known as Assam Forest Regulation (Amendment) Act, 1995, which was published in the Assam Gazette Extra-ordinary on May 2, 1995.

5. A plain reading of the amended definition of "Timber" goes to show that the "Timber" includes itself when cut into pieces or sized or peeled out or sliced out, generally known as veneer for manufacture of plywood, block board etc. It is also seen that there is a clear indication that the source of veneer is only the trees which are later on cut into pieces or sizes or peeled out or sliced out through a mechanical process.

6. The factual backdrop that necessitated the aforesaid amendment, was that the Chief Conservator of Forest, Government of Assam, issued one circular being No. FG-38/Veneer/EAC dated 12.9.86 directing all Divisional Forest Officers to treat veneer as forest produce and to control its movement u/s 40(2) of the "Regulation" with immediate effect. The Respondents/writ Petitioners, along with Ors. carrying on business of manufacture and selling of veneer thereby manufactures of "Timber", approached this High Court seeking for quashing the above noted circular and also for a direction for obtaining transit pass for transportation of their "veneer". Those writ petitions filed by the Respondent/writ Petitioners were finally disposed of by this Court by a common judgment on 2.7.1993 holding that "veneer" could not be treated as a "forest produce" and therefore, it could not be included in the definition of "Timber" and as such, for movement and transportation of veneer, obtaining transit passes and production thereof at the check gates were not at all necessary and the said judgment was also reported in (1993) 2 GLJ 153 (Tumda Saw and Veneer Mills v. State of Assam and Ors.) Hence the above mentioned amendment had to be effected.

7. Feeling aggrieved by the aforesaid amendment by which the definition of "Timber" has been widened by including the term "Veneer" and its consequent affect thereof as regards the obligation to obtain transit passes for movement and transportation of said "veneer" within and through Assam, the Respondents/writ Petitioners moved this Court through a batch of writ petitions. The learned Single Judge after hearing the parties, allowed those writ petitions by a common judgment and order dated 25.6.96 set aside and quashed the insistence for transit pass by the Appellant/State-Respondent for movement and transportation of "veneer" holding that the State Legislature under entry 17A of the List-III had no competence to make law to include "veneer" in the definition of "Timber" under the Regulation as the same was not a forest produce".

8. The judgment and order dated 25.6.96 is under challenge in the instant

appeals:

9. The cardinal issue that has come up for consideration and determination in this writ appeal is:

Whether the State Legislatures under Entry 17 A of the List III has legislative competence to make law by way of amendment to include "veneer" in the definition of Timber", as defined in the "Regulation".

10. We have heard Mr. A.M. Bujarbarua, learned Government Counsel appearing on behalf of the Appellants. Also heard Mr. S.K. Kejriwal, learned Counsel appearing on behalf of some of the Respondents/writ Petitioners.

11. In order to appreciate the discussion on the issue in question, it would be appropriate and necessary to know what is "veneer".

12. "Veneer" is a raw material converted from green logs for manufacturing plywood. Initially trees, being the forest produce, are cut into pieces and tops are removed to be known as "Timber". These pieces of such "Timber" called as logs, are taken to the factory to be peeled out by some mechanical means. The logs, firstly, are cut into sections according to the required sizes of "Veneer", barks of the logs are removed and the naked sections logs are fitted within the peeling machine by using mechanical process where logs are moved in a circular motion. Thereafter the thin layers of "Timber", being sliced, come out. These thin layers are thereafter cut into different sizes which make the "veneer".

13. The entire process of manufacturing "veneer" goes to show that the "veneer" retains all the quality of "Timber" both physical as well as chemical even as mechanical process is required for making "veneer". Candidly the factual position is that originally trees are cut into pieces to make logs which are later on put into mechanical process to produce "veneer". The argument that since veneer is a finished product and is the outcome of manufacturing process, the same cannot be termed to be a "forest produce", cannot be countenanced. Because one should not forget that "veneer" is originally manufactured from logs. Mere putting it in the mechanical process to make "veneer" for manufacturing the plywood, the logs does not cease its basic character of "Timber".

14. Now let us see whether this amendment lacks the legislative competence. Argument have been advanced on behalf of the State-Respondents that by including "veneer" in the definition of "Timber" u/s 3(3) of the Regulations. No law was made contrary to the Entry 17 A of the current List or of the 7th Schedule of the Constitution of India or any existing law. What is done by this amendment is that only the "veneer" has been included in the definition of "Timber" as already mentioned herein above. Considering the definition itself, we are prima facie of the view that there is no lack of legislative competence of the State Legislature in amending the definition of "Timber" in question. We are of the considered view that Legislature is quite competent to add, include and

define a word even artificially.

15. To substantiate the said reasoning, we have to fall back upon a decision of the Apex Court in *Om Prakash and Ors. v. State of Rajasthan*. and Ors. reported in 1990 (Supp) SCC 742. In the said decision the Apex Court had the occasion to decide the legislative competence for inclusion of sugar in the Schedule of "agricultural produce" under the Regulation of Agricultural Marketing Act, 1961 (for short the Act). In that case "sugar" as one of the items was included in the Schedule to be said Act to cover "agricultural produce". Argument was also made that inclusion of "sugar" in the Schedule in question of the said Act was arbitrary because it was not produced out of soil being the basic ingredients of "agricultural produce" and therefore such inclusion was for total disregard of the definition of the word "agricultural produce" in the Act which includes all the produce in agriculture, horticulture, animal husbandry or otherwise as specified in the Schedule. The Supreme Court held that there is no lack of legislative competence in including "sugar" along with other manufactured articles, such as shakkar, gur etc as "agricultural produce". In paragraph-5 of the aforesaid judgment the Apex Court observed as under:

5. Inclusion of sugar in the Schedule was urged to be arbitrary, as it was not produced out of soil the basic ingredient of agricultural produce. Fallacy of the submission is apparent as it was in complete disregard of word "agricultural produce" in the Act which includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The Legislative power to add or include and define a word even artificially, apart the definition which not exhaustive but inclusive neither excludes any item produced in mill or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks expanse of the expression "or otherwise as specified in the Schedule". Nor switch over from indigenous method of producing anything to scientific or mechanical method changes its character...

16. In the case of *R.K. Garg and Others Vs. Union of India (UOI) and Others*, the Supreme Court ruled that the Legislature must be allowed greater "play in joints" as it is called. Allowance must also be made trial and error by the Legislature. In paragraph 8 of *R.K. Garg's* case (supra) the Apex Court observed as follows:

.... It has been said by no less a person than Holmes, J. that Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait - jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaptation of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid..."

17. Thus it is seen that remembering the practical problem which being faced by the legislature, it is now settled that as regards the legislative competence, presumption is always in favour of the constitutionality of the provisions of law.

18. The above cited observation from the judgment of the Apex Court, in our humble opinion, would go to render a formidable answer to the arguments for the lack of legislative competence.

19. In Anr. case reported in P.N. Krishna Lal and Others Vs. Govt. of Kerala and Another, the Apex Court ruled that the presumption generally is always in favour of the legislative competence. Legislatures, having power to legislate has a power to legislate on any ancillary or incidental steps. It is further held that if a legislation is in pith and substance within the competence of the State Legislature, its incidental encroachment in the field of Central legislations would not render the encroachment void.

20. The Division bench of this Court in Assam State Electricity Board and Others Vs. Bharat Hydro Power Corporation Ltd. and Others, held in paragraph 50 as follows:

50... In deciding upon the validity of laws, Judges have to bear in mind that the function of making laws has been entrusted to the elected representatives of the people and the function of the Courts is to interpret those laws and not to act as a third or revising chamber. Certain general principles/rules have emerged to guide the Courts in discharging their solemn duty to declare laws passed by a Legislature unconstitutional;

i) There is a presumption in favour of the constitutionality and a law will not be declared Unconstitutional unless the case is so clear as to be free from doubt, "to doubt the constitutionality of a law is to resolve it in favour of its validity." If there is a reasonable doubt, it must be resolved in favour of the legislative action and their acceptance. The presumption in favour of the constitutionality of a statute and all circumstances which might lead to the statute being upheld must be presumed by the Court and must be shown not to exist by the person challenging the Validity of the Act.

ii) Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of the law upheld.

iii) The Court will not decide constitutional questions if a case is capable of being decided on other grounds.

iv) The Court will not decide a larger constitutional question than is required by the case before it.

v) The Court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.

vi) A statute cannot be declared unconstitutional merely because in the opinion of the Court it violates one or more of the principles of liberty, or the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution.

vii) In pronouncing on the constitutional validity of a statute, the Courts is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it.

viii) Ordinarily, Courts should not pronounce on the validity of an Act, or part of an Act, which has not been brought into force, because till then the question of validity would be merely academic.

21. Having regard the above cited judicial pronouncements and also upon hearing the learned Counsel for the parties, we are of the considered view that in the instant case the State Legislature has the competence to include "veneer" in the definition of "timber" and Section 3(3) of the Regulation by way of amendment. Consequently, the impugned judgment is hereby set aside and quashed.

22. Since the inclusion of "veneer" in the definition of "timber" is held by us to be valid, we also hereby affirm the obligation to obtain the transit passes for movement and transportation of the "veneer" within and through the State of Assam.

23. Besides, it is to be noted herein that the Apex Court by a landmark judgment in T.N. Godavarman Thirumulkpad Vs. Union of India and others, put a complete ban on the felling of trees and the movement of cut of trees and "timber" from seven North Eastern States to any other state of the country either by rail or road or by waterways except movement of certified "timber" required for defence or other Government purpose. In view of the said judgment, in the entire North East, as on today, all the saw, veneer, plywood mills in Tirap, Changlang and Assam are being closed and movement of cut trees from this region are totally banned with certain exception as mentioned above.

24. For the reasons and discussions made above, all these appeals are allowed. Parties are directed to bear their own costs.