

(1991) 03 KAR CK 0064

In the Karnataka High Court

Case No : W.A. No's. 525 and 526 of 1989 and W.P. No. 14734 of 1990

State of Karnataka

APPELLANT

Vs

Cantreads Private Limited

RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Karnataka Forest Act, 1963 — Section 2 (7)
Rubber Act, 1947 — Section 13, 13 (3)

Citation : (1991) ILR (Kar) 1371 : (1991) 1 KarLJ 500

Hon'ble Judges : Mohan, C.J.;Hakeem, J

Bench : Division Bench

Advocate : H.L. Dattu, Government Advocate and G. Chander Kumar, for the Appellant; G. ChanderKumar, S.G. Sundaraswamy H.L. Dattu, Government Advocate for R-1 and R-2 and M.R. Achar, for R-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—All these Writ Appeals and the Writ Petition can be dealt with under a common Judgment since the point involved is one and the same, namely, whether R.M.A. rubber sheets of various grades could be called forest produce within the meaning of Section 2(7) of the Karnataka Forest Act, 1963 (hereinafter referred to as the Act) as it stood prior to Amendment Act No. 10 of 1989.

2. The facts in W. A.No.526 of 1989 would be enough to dispose of these cases. Hence, we propose to take up W.A.No.526 of 1989 first. This Writ Appeal is against the Judgment in W.P.No.23718 of 1981. Respondent 1 is a Company engaged in the manufacture of tread rubber. It negotiated with the State of Karnataka appellant-1 herein, for supply of 60 tonnes of natural rubber of Grade RMA I to V per month for a period of five years upto 31-3-1984 subject to certain conditions.

The Government of India on 17th April 1979, in exercise pf the powers u/s 13 of the Rubber Act, 1947, fixed the minimum price at certain rates in respect of

various grades and qualities of rubber and latex of different concentrations excluding the cost of container. This fixation of price was upto 30th June 1980. Pursuant to this, appellant-1 issued a Notification that in view of Section 13(3) of the Rubber Act of 1947, there should not be any sale of rubber below the minimum price fixed by the Notification of the Government of India dated 17th April 1979. It was further directed that the rate indicated at 20 per cent below the average rate of previous three auctions should not be lower than the minimum price fixed by the Government of India referable to the particular grade of rubber. In such an eventuality, the selling rate shall be at the minimum price fixed by the Government of India. Thereafter, the Government of Karnataka transferred the liability of supply of the quota of rubber to M/s. Karnataka Forest Plantation Corporation. This was by a Notification dated 27th July 1981. While the matter stood thus, the Chief Conservator of Forests fixed the seignior age rate excluding all taxes for the raw smoked rubber exclusive of all taxes at a certain rate. This Notification stood modified by a corrigendum issued on 16th June 1981. The Government of Karnataka, in view of this Notification and the corrigendum, wrote to respondent-1 herein that the quota of rubber to be supplied from 12th June 1981 onwards would be at the rates fixed by the Chief Conservator of Forests u/s 101A of the Act, it was further stated that the supply of rubber from 9th January 1981 onwards will be at the rates mentioned in the orders made by the Chief Conservator of Forests. Aggrieved by the fixation of seignior age rates W.P.No. 23718 of 1981 came to be filed.

3. The main contentions urged before the learned single Judge were:

Rubber is not a forest produce within the meaning of Section 2(7) of the Act. Rubber tree is not a forest tree, in any event, latex produced from rubber trees in a rubber plantation is only an agricultural produce. What is sold by the appellants in favour of respondent-1 herein is not latex got straight from the tree. It is a chemically and mechanically processed produce resulting from the treatment of latex converting it into sheets or blocks of rubber in factories. Such a processed sheet or block of rubber can in no sense be regarded as a forest produce it is not understood as forest produce either in rubber industry or in common parlance. Therefore the Chief Conservator of Forests will have no power or jurisdiction to fix seignior age value for rubber as is sold in favour of respondent-1 herein.

The respondents do not extract rubber sheets produced by the Government from the liquid as tapped by them from rubber trees. seignior age value means the royalty payable by the consumers and purchasers for the collection and removal of forest produce from forests on licences or permits at the rates fixed by the Government. The demand based on the order of the Chief Conservator of Forests is therefore without authority of law.

Inasmuch as it is not a forest produce within the meaning of the Act, Section 98A of the Act is equally inapplicable. Therefore the levy of forest development tax as contemplated under the said Section is unauthorised. Consequently,

respondent-1 herein would be entitled to the refund of the amount paid hitherto.

4. On behalf of appellant-1 namely, the State of Karnataka, these contentions were opposed stating that rubber either latex or processed sheets would fall within the definition of "forest produce". The definition of "forest produce" in Section 2(7) of the Act is an inclusive definition. That must be interpreted as illustrative and not exhaustive. Once this position is arrived at, the fact that it undergoes some form of manufacture for the purpose of preservation, it does not cease to have the characteristic of forest produce. Therefore, the contention that Section 101A of the Act with regard to levy of seignior age fee or Section 98A of the Act with regard to development tax could not be levied is without substance.

5. The matter came up for decision before our learned brother Justice Rajendra Babu. The learned Judge, on an elaborate consideration referring to the Books on rubber as well, concluded that where there is no definition including rubber in any particular form as forest produce and when that produce is sold not in its natural form but after subjecting it to a process, a definition or meaning available either in dictionaries or in technological text books may not be of much relevance. It was agreed on all sides that what is relevant in such a case will be the meaning understood in the trading or commercial parlance. He distinguished the ruling of the Kerala High Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. Sherneilly Rubber and Cardamom Estates Ltd. and Others, Court reported in Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. Sherneilly Rubber and Cardamom Estates Ltd. and Others, and applied the ratio of the Judgment of the Madras High Court reported in Okay Rubber Corporation Vs. State of Tamil Nadu, wherein there was an elaborate consideration of the definition. On this conclusion, he held ultimately that the levy of either seignior age fee or even the development tax u/s 98A of the Act would be unwarranted. Accordingly, he directed the refund of the amount hitherto paid by the petitioner before him namely, respondent-1 herein, either by way of seignior age fee or development tax or both. Hence, the State has preferred W.As.Nos.525 and 526 of 1989 while W.P.No. 14734 of 1990 has been directed to be posted along with these Writ Appeals.

6. Before us, the learned Government Advocate would vehemently submit that the words "forest produce" in Section 2(7) of the Act must be construed liberally because it is an inclusive definition. The mere fact that for the purpose of preservation of latex sulphuric acid is added and is subjected to a process of smoking thereby it is converted into RMA rubber sheets. It does not lose its character as a forest produce. One has to look at the substance of the matter and not go by how in commercial parlance it is so treated. As a matter of fact, the decision of the Kerala High Court in Deputy Commissioner of A.I.T. and S.T. v. S.R. & C. Estates Ltd. fully supports the appellant. The ratio of the Judgment in the said case ought to have been applied. The Madras High Court in Okay Rubber Corporation Vs. State of Tamil Nadu, was dealing with a case of raw or natural latex arising under the Tamil Nadu General Sales Tax Act. Having regard to the

fact that it is a fiscal statute the interpretation favourable to the assessee was given, but that can have no application to the facts of the present cases. Therefore, the Writ Appeals will have to be allowed.

7. Mr. M.R. Achar, learned Counsel appearing for respondents 3 and 4 in W.P.No. 14734 of 1990, namely, Karnataka Forest Plantations Corporation Limited and Karnataka Forest Development Corporation Limited, would draw our attention to the Agreement between the parties dated 25th June 1979 as seen from Annexure-C. He submitted that even the preamble of the Agreement makes it clear that what the buyers requested was supply of RMA 1 to 5 grades natural rubber at concessional rates for the manufacture of tread rubber. On this the Government of Karnataka agreed to supply and the buyers agreed to purchase 60 tonnes of RMA 1 to 5 Grades of natural rubber per month. Having regard to the terms of the Agreement, it is not open to them to contend that RMA rubber sheets ceased to be forest produce.

8. In opposition to this, Mr. S.G. Sundaraswamy, learned Senior Advocate for respondent-1 in the Writ Appeals and Mr. G. Chanderkumar, learned Advocate for the petitioners in the Writ Petition, would urge that while interpreting forest produce occurring in Section 2(7) of the Act one must have regard to the meaning as would be harmonious to the Forest Act. The Forest Act is a law relating to forest and forest produce for the purpose of protection and preservation of forest and forest produce. Where the natural latex produced from the tree has undergone a process of manufacture, however small that process may be, the resultant product does not retain the character of forest produce. In those cases, sulphuric acid is added to the latex for its preservation. Then again it is subjected to a process of smoking and RMA rubber sheets of various grade are made. Therefore the process itself is not small. In common parlance or in business circle nobody would mistake this RMA rubber sheets for natural rubber. As a matter of fact, on this aspect all the parties were agreed before the learned single Judge. Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. Sherneilly Rubber and Cardamom Estates Ltd. and Others, is a case where the Kerala High Court while interpreting the provisions of the Madras General Sales Tax Act found that in the Madras Plantation Agricultural Income Tax Act the agricultural income derived from rubber plantation was included. Therefore, for the purpose of sales tax it cannot be treated otherwise. Then again reliance was placed on the decision in DEPUTY COMMISSIONER OF A.I.T. & S.T. v. RAMAN which went on concession. Therefore, the decision in Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. Sherneilly Rubber and Cardamom Estates Ltd. and Others, has no application to the present cases. On the contrary, the decision of the Madras High Court in Okay Rubber Corporation v. State of Tamil Nadu is directly on point. That case dealt with the scope of Entry 74 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, namely, raw rubber, namely latex. In the said case reliance was also placed on the letter of the Rubber Research Institute of India to arrive at the conclusion that latex is definitely different from RMA rubber sheets. The case is almost identical to the

cases on hand. The learned Judge was therefore right in relying on the same. Therefore, no interference is called for.

9. Having regard to the above arguments, the one and the only point that arises for our consideration is as to whether RMA rubber sheets could be called forest produce within the meaning of Section 2(7) of the Act.

10. We may now extract the relevant portion of the Forest Act:

"2. Definitions - In this Act, unless the context otherwise requires (7) forest produce" includes -

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

Timber, charcoal, caoutchoue, catechu (sandalwood) lootikai (Capparis Mooni), wood oil, sandalwood oil, resin, rubber latex, cocobeans or pods, natural varnish, bark, lac, mahua or ippe (Bassia latifolia) flowers and seeds, seed of Prosopis, juliflora, kuth, and tembumi or tupra (Diosphyros-Melanoxyton) leaves, rosha, (Cymbopogon Mortini) grass and oil and myrabolams (Terminalia Chebulia), Terminalit Belerica (phyllanthus Emblica, Rampatre and Shigakai);

(the rest of the section is omitted as not necessary)

We may, for the sake of completion, look at Section 98A of the Act which deals with levy of forest development tax in respect of forest produce. Section 98A reads:

"98A. Levy of Forest Development Tax -

(1) Notwithstanding anything contained in this Act, in respect of forest produce disposed of by the State Government or by a Corporation, owned or controlled by or a body notified by the State Government by sale or otherwise, there shall be levied and paid to the State Government a tax at the rate of eight per cent on the amount of consideration paid therefor:

Provided that the tax levied and paid under this sub-section on the disposal of forest produce specified in column (2) of the Table below to the categories of persons or industries specified in column (3) thereof shall be twelve per cent on the amount of consideration.

Provided further that the tax under the above proviso in respect of Eucayptus and Bamboos supplied as raw material for manufacture of news print shall be fifty per cent of the rates specified therein or a period of five years.

TABLE

Sl.No.

Forest produce

When disposed of to

1.

Timber, Firewood, Grass Charcoal and Eucalyptus

Industries

2.

Bamboo, reeds and canes

Pulp and Paper Industries, except Cottage industries

3.

Sandalwood

a) Sandalwood oil

b) others, except

i) Artisans

ii) Religious Institutions; and

iii) Cottage Industries

4.

Minor forest produce as Industries except defined in the rule but not falling under Serial Numbers 1 and 2.

Large Scale Multi Purpose Co-operative Societies (LAMPS)

(1A) Notwithstanding anything contained in Sub-section (1), no tax shall be payable to the State Government by a Corporation, owned or controlled by the State Government to the extent of tax not levied and collected by it during the period from fourteenth day of February, 1978, till the commencement of the Karnataka Forest (Amendment) Act, 1988.

(2) The said tax shall be collected along with such consideration.

(3) It is hereby declared that the said tax shall be in addition to and not in lieu of any tax payable in respect of such produce under any other law in force."

Section 101A of the Act talks of grant of forest produce on seignior age rate. Under Sub-section (1) of Section 101A the State Government is enabled to grant any person any forest produce in any District or reserve forest on payment of such seignior age value as may be fixed by the Chief Conservator of Forests. The dictionary meaning of the word "caoutchouc" is:

"kow" chook, n. India-rubber, gum-elastic; the latex of rubber trees. (Fr,, - Carib cahuchu)."

However, by amending Act No. 10 of 1989, the word rubber came to be specifically included. As to whether the original Act whom it said "caoutchouc"

would include rubber or not or whether there was an ambiguity concerning the same and therefore the word rubber came to be specifically included by amending Act No. 10 of 1989, we need not pause to consider. We are only stating this for the purpose of narration. However, what is important in this case and which is the common case between the parties is, the latex which is the natural produce is hardened by the application of sulphuric acid. The said latex is shaped in the form of sheets. Thereafter it is dried with the help of smoke and various Grades of I to V are produced. This is done for purposes of preservation of latex and making it fit for marketing.

10. Where, therefore, it has undergone this process of manufacture, it is impossible for appellant-1 namely, the State of Karnataka or again respondent-3 in the Writ Petition to contend that it would still be forest produce. If really it was so intended, nothing would have been easier than to specifically state so. What we have in our mind while stating this is the definition of sandalwood u/s 2(18) of the Act. We may at once extract Section 2(18):

"2(18) "sandalwood" means any portion of sandal (*santalum album*) tree and includes bark, leaves and roots thereof whether containing heart wood or not and whether in the form of roots, billets, pieces (sawn or otherwise), chips (whether coloured or not and whether mixed with other ingredients or not), sawdust, spentwood, flakes or pulp; but does not include sandalwood manufactured in the form of sandalwood handicraft articles."

Where, therefore, what was contemplated was nothing more than the natural latex which alone would constitute forest produce without being subjected to the process of manufacturing, neither the State nor respondent-3 in the Writ Petition can contend otherwise.

11. We may now look at the decision in *Deputy Commissioner of A.I.T. v. S.R. & C. Estates Limited*. In that case the question that arose was as to what would be the meaning of the produce of the land. At pages 526 and 527 of the Report the following important passage occurs:

The Tribunal has held rubber to be a produce for two reasons. One is that though the aforesaid term has not been defined by the Madras General Sales Tax Act, yet the Madras Plantations Agricultural Income Tax Act, 1955, in defining what is agricultural income included that from rubber as well by second Explanation to Section 2(2)(ii) which reads as follows:

Agricultural income derived from such plantation by the cultivation of coffee, rubber, cinchona or cardamom means that portion of the income derived from the cultivation, manufacture and sale of coffee, rubber, cinchona, or cardamom, as the case may be, as may be defined to be agricultural income for the purposes of the enactments relating to Indian Income Tax."

It is clear that what is treated by the same Legislature as a source of agricultural income cannot be treated for purposes of another Act not to be agricultural

produce. That apart, one of us in Deputy Commissioner of Agricultural Income Tax and Sales Tax Vs. A.P. Raman, had held that whether a particular process after the character of the agricultural or horticultural produce to that of manufactured article, is a question of fact, but as a general guiding principle of law it can be safely laid down that if an agriculturist puts the produce gathered from his lands to certain minimum processes ordinarily employed by an agriculturist to make it really marketable or more marketable or to make it fit to be taken to market, it cannot be said the produce ceases to be an agricultural or horticultural produce. Applying the aforesaid test to the cases before us it is clear that latex is hardened by the application of sulphuric acid, shaped in the form of sheets and dried with the help of smoke. This is done for purposes of preserving the latex and making it fit for marketing. It follows that rubber is still produce from land and not liable to be sales tax. We are fortified in this view by the observation in India Coffee and Tea Distributing Co. Ltd. Vs. State of Madras, where the decision of a learned single Judge, holding rubber to be agricultural produce, was not reversed, and indeed conceded by the Government Pleader. The relevant passage in the case reads as follows:-

The learned Judge after considering the several authorities on the subject hold that tea and rubber would be agricultural produce...The learned Government Pleader conceded that rubber would be an agricultural produce."

It follows that rubber is an agricultural produce."

Therefore, the line of reasoning adopted in the aforesaid case was entirely different having regard to the definition of agricultural income under the Madras Plantations Agricultural Income Tax Act, 1955 and the concession which loom large in India Coffee and Tea Distributing Co. Ltd. Vs. State of Madras, Therefore, the above Ruling does not advance the case of the State of respondent-3 any further.

12. We may now come to (1984) 55 S.T.C. 247 SC. That again arose under the Tamil Nadu General Sales Tax Act, 1959. Entry 74 Column (2) of the First Schedule to the Tamil Nadu General Sales Tax Act though originally contained the word "Rubber" thereafter that word came to be substituted with the words "Raw Rubber" namely, latex. The question arose whether RMA-rubber sheets would fall within this definition. The Division Bench of the Madras High Court held as follows:

"At page 118 of the typed set the extract of pages 44 to 57 from Rubber Growers" Companion, published by the Rubber Board, India, 1974, dealing with processing of the crop from rubber plantations for marketing has been given. It is mentioned therein that the crop from the rubber tree is latex, a milky liquid, is harvested by the process of tapping, that generally the latex that flows out from the rubber trees on tapping is channelled into coconut shell cups attached to them, which in turn is collected (the latex) in clean buckets 2 to 3 hours after tapping, that the latex and the different kinds of scrap are highly susceptible to

degradation due to contamination on keeping and therefore, it is essential to process them into a form that will allow easy storage and marketing without degradation. Then the booklet deals with important forms in which the crop from rubber plantations can be marketed. They are (1) preserved latex and latex concentrates (2) dry ribbed sheet rubber (3) dry crepe rubbers and (4) dry solid block rubbers. After mentioning the above items, it is stated that the crop collected in the form of liquid latex can be processed into any of the above forms. But the crop collected in the form of tree lace, shell scrap and earth scrap can be processed only into crepe or solid block rubbers.

After narrating the above items, the processing and preservation of latex or latex concentrates has been given as follows:

"Latex is a white or slightly yellowish opaque liquid with a specific gravity which varies between 0.974 and 0.986. It is a weak lyophilic colloidal system of spherical or pear shaped rubber globules suspended in an aqueous serum...Fresh latex as it comes out from the tree is slightly alkaline or neutral but since it is an excellent medium for the growth of bacteria like milk, it becomes acidic rapidly due to bacterial action and gets coagulated or clotted on keeping. Therefore, fresh latex cannot be kept for long without pre-coagulation.

At page 120 of the typed set, the methods of anti-coagulation and preservation are given. From pages 90 to 117 of the typed set, the type descriptions and packing specifications for natural rubber adopted by the Rubber Manufacturers Association, New York, and endorsed by the Rubber Trade Association of New York are extracted in details.

In Section 2 at page 93 of the typed set, the following descriptions are given:-

"Wet, bleached and virgin rubber and rubber that is not completely dry at the time of buyers" inspection is not acceptable for any of the RMA official types (except slightly under cured rubber as specified under 5 ribbed smoked sheet description). Skin latex coagula shall not be used in whole or in part for producing any of the RMA types. Copper or manganese content in any RMA, type and grade of rubber shall not exceed the following maximum tolerances: Copper 8 parts and Manganese 10 parts per million."

Section 3 at page 94 of the typed set deals with ribbed smoked sheets and it is stated as follows:

"Nothing but ribbed smoked sheets of rubber can be used in making these grades; cuttings, block or frothy sheets, or other scrap, air-derived sheets or smooth sheets not permissible."

Thus RMA smoked rubber sheets are obtained by processing the natural latex rubber. Therefore, RMA rubber sheets cannot be treated in the category of raw or natural latex."

On this basis it was concluded at page 252 as follows:

"Thus, the Government rubber Plantation itself has treated grade rubber sheets as different from wet latex while selling the same in auction. If the State Government itself has treated latex as a different commodity from the graded sheet for the purpose of sale, the same treatment has to be adopted with reference to the purchase made by the assessee from the same rubber plantation and hence the two commodities cannot be treated as identical goods. In several other correspondence and invoices also, RMA graded rubber goods (sic). With reference to natural rubber it is packed in drums and the rate is on weighment or on quantitative measurement basis. At page 34 of the typed set relating to documents, we find the letter of the new Ambadi Estates Private Limited, Kulasekaram in Kanyakumari District. In the said letter an order has been passed for 320 drums of rubber latex 60 per cent D.R.C. with a schedule of supply. At page 39, we find the letter of the Rubber Research Institute of India in which it is stated that the natural rubber sheets are graded by visual comparison methods as per the norms prescribed by the Rubber Manufacturers' Association, Newyork, which has the abbreviated name RMA, and that latex is definitely different from RMA rubber sheet."

This Decision fully supports the stand of respondent-1 in the Writ Appeals as well as petitioner-1 in W.P.No. 14734 of 1990. Therefore, the learned Judge was right, if we may say so with respect, in relying on this Ruling.

13. Our attention is drawn to the Agreement Annexure-C in W.P.No. 14734 of 1990, in the agreement no doubt in two places it is stated thus:

"Whereas the buyers have requested for supply of RMA 1 to 5 grades Natural Rubber...

And whereas the Government of Karnataka have agreed to supply and the buyers have agreed to purchase 60 tonnes of RMA 1 to 5 grades of Natural Rubber..."

This by itself is not conclusive nor does it aid our interpretation in any manner. Therefore, the reliance placed by respondent-3 in the Writ Petition on this Agreement will be of no assistance. In the result, we find no difficulty in accepting the Judgment of the learned single Judge.

14. Accordingly, we dismiss the Writ Appeals and allow W.P.No. 14734 of 1990. However, there shall be no order as to costs. The refund of the amount due in favour of respondent-1 in each of the Appeals and petitioner-1 in W.P.No. 14734 of 1990 will be made on or before 31st of May 1991. If the refund has already been made pursuant to the Judgment of the learned single Judge under appeals, there will be no further liability to refund.