

(1994) 03 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No's. 700 to 702 of 1990

Veneer Mills

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-03-1994

Acts Referred:

Constitution of India, 1950 — Article 301
Destructive Insects and Pests Act, 1914 — Section 3, 3 (3)

Citation : (1994) ILR (Kar) 1533 : (1995) 1 KarLJ 607

Hon'ble Judges : Venkataraman, J; Rajendra Babu, J

Bench : Division Bench

Advocate : K.R.D. Karanth, for the Appellant; Ashok Haranahalli, Central Govt. Stdg. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—This batch of Cases have been filed by importers of timber challenging the levy of inspection fee on plants imported into India on the ground that levies under Clause 3(12) and Clause 12 of the Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989 read with Section 3 of the Destructive Insects and Pests Act, 1914, is not applicable to commercial timber logs imported into India.

2. For purpose of convenience, we will take up the first batch of Cases in WP Nos. 700 to 702/1990 and dispose them of and following this Decision, we shall make separate orders in each of the other Cases although the matters have been heard together.

3. At the time of filing of the Petitions, the petitioners had challenged the validity of the inspection fee on the ground that the same was not authorised u/s 3 of the Destructive Insects and Pests Act, 1914 ("Act" for short). The said Act was amended during pendency of these proceedings by Act 12 of 1992. By that amendment and validation Act Sub-section (3) was introduced into Section 3 of the Act retrospectively by the Central Government to levy and collect fees at

such rates and in such manner as may be specified for making an application for a permit to import, or for making inspection, fumigation, disinfection, disinfestations or supervision of, any article or class of articles or any insect or class of insects under the section. Validation clause was also introduced validating the levy and collection of fee made prior to the introduction of the Act by Notification dated 27.10.1989 notwithstanding any decree or orders that may have been passed by any of the Courts. In the circumstances, therefore, petitioners have not pressed those contentions in relation the validity thereof and have given up that aspect of the case.

4. Now, what is urged before us fall into four facts:

(i) that the levy and collection of inspection fees under Schedule III A at Entry 4 towards plants, fruits and seeds for consumption would not be applicable to the petitioners inasmuch as they import only timber or certain other materials for purpose of plywood industry. Though the same may fall within the definition of "plant", the same not being imported for the purpose of consumption, would not fall within that category and no levy could be made hereto;

(ii) that the fees are levied not only for the purpose of inspection but also for fumigation/disinfection/disinfestations/supervision charges under Schedule III in categories A and B. Irrespective of whether inspection was made or not, if fumigation/ disinfection/disinfestations is done to the goods in question, there will be no necessity to do any inspection and therefore, the question of collection of inspection fees would not arise at all.

(iii) that what is collected by the respondents under Schedule III A is by way of service rendered to the petitioners and in fact, no service is rendered to the petitioners either individually or as a class. The object of the Act being something else other than rendering service to the petitioners, being merely regulatory or restrictive in character, it cannot be treated as service rendered to the petitioners and therefore, no fee could be levied or collected from them.

(iv) that the rate of inspection fees referred to earlier and collected is far in excess of service, if any, rendered and is not quid pro quo.

5. The question whether logs of timber imported by the petitioner from foreign countries for use in the manufacture of plywood were available to quarantine regulation under the statutory notification issued on 27,10.1989 under the provisions of the Act came up for consideration before the Supreme Court in SARDA PLYWOOD LIMITED AND ANR. v. UNION OF INDIA AND ORS SLP(civil)No.1277 of 1990 & IA No.3 DD 9.4.1990. The contention advanced before the Supreme Court was that the Regulation must be commensurate with and show a reasonable relation to the object and should not be unduly restrictive of the citizen's right and also referred to the commerce clause arising under Article 301 of the Constitution. In that context, while explaining the notification dated 27.10.1989 issued u/s 3 of the Act restricting import into India of any plant, the expression "plant" was explained. It was noticed therein that, it

includes any plant or part thereof whether living or dead, trees, shrubs, nursery-stock and includes all vegetatively propagated materials. Therefore, the Supreme Court held that timber logs would also fall within this category. The contention advanced before the Supreme Court was however that, after import of timber logs, they are not likely to come into contact with any crop or plant but are directly removed to the factory where plywood is manufactured and there is no possibility of the insects or the fungus or the pests in them infecting any plant. In meeting this contention, the Supreme Court elaborately considered the objects and reasons of the Bill which ultimately became the Act which is under consideration before us and after referring to the international agreements entered into by the Government of India and other countries and certain standard works on the subject as Encyclopedia Americana (Vol:23) as also Interstate Barriers in Indian and American Constitutional Experience: Lawrence F.Ebb: Stanford Law Review, concluded as follows:

"The object of the law is to protect plant life in India from such alien insects, fungus, and pests which might be introduced into the country through imported articles contaminated with them or carried by them. This object is sought to be achieved by preventing the entry into the soil of India of such potential carriers. The question whether after such import the insects, fungus, or pests actually infect plant-life or not is not the decisive factor. The very existence of a possibility of such infection is sufficient justification. The main purpose is to prevent their very entry into India. The need for treatment and the like envisaged in the notification rightly pre-supposes the potentiality of the timber logs for carrying those insects and pests."

6. However, Sri K.R.D. Karanth, learned Counsel for the petitioners urged that the Supreme Court did not examine the scope of the Entry in the notification which authorises the levy particularly, Schedule III A relating to inspection fees regarding plants, fruits and seeds for consumption. It is urged that the seeds and fruits and plants which are brought for being consumed are to be orally and directly consumed by human beings but there is no question of such consumption of timber logs and therefore, it is urged that, Entry 4 in Schedule III will not authorise the Central Government to levy or collect fee on timber logs. We are afraid this contention comes in the teeth of several Decisions of the Supreme Court including in *Anwarkhan Mahboob Co. Vs. The State of Bombay* (Now Maharashtra) and *Others*, wherein the concept of consumption has been explained. The production of wealth, as economists put it, consists in the creation of "utilities". Consumption consists in the act of taking such advantage of the commodities and service produced as constitutes the "utilization" thereto. For each commodity there is ordinarily what is generally considered to be the final act of consumption. In the said Decision, several illustrations are given. We need not advert to all of them but, reference to one of them is sufficient. Cotton when ginned is stated to have been consumed; after ginning is over, when yarn is produced, ginned yarn is consumed; and when yarn is converted into cloth; yarn is consumed. Therefore, at each stage of utility there is consumption as an

economic concept. Therefore, when plants have been imported and admittedly the case of the petitioners is that the timber logs in the present case are imported to India for the purpose of manufacture of plywood or its products, it only means that the timber logs are consumed for the purpose of manufacture of other products. Therefore, we hardly find any substance in the contention urged on behalf of the petitioners. We may also reject this contention on the basis of another Decision of the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, wherein the Supreme Court stated that merely because an argument had not been addressed before the Supreme Court, the conclusion drawn by the Supreme Court or the ratio laid down by it would not be applicable in a given case is not available.

7. The scheme of the activities envisaged under the Act have been elaborately considered by the Madras High Court in *DEEPAK SHAH v. UNION OF INDIA* W.P.No 1292 of 1990 DD 31.12.1993 wherein the Court noticed that the Food & Agricultural Organisation in its Sixth Conference in 1951, under Article 14 of its Constitution approved the International Plant Protection Convention which came into force on 3.4.1952 wherein the Plant Quarantine Training Guide was prepared by the FAO, Plant Quarantine Section, Rome, 1983. The methodology adopted for conducting plant quarantine services have been dealt with under the caption "VI: Local and Global Aspects" at pages 48-51, and they have been set out in the said Judgment and it is not necessary to refer to each of them. Thus the said convention clearly envisaged different types of inspection involved. Inspection becomes necessary not only for the purpose of finding out whether the timber logs which have commercial importance are infested with any insects or not but also for the purpose of finding out what kind of fumigation or disinfection or treatment becomes necessary. In fact, material has been made available for us to show that certain types of insects have been unidentifiable in spite of vast research being done as indicated by the CAB International Institute of Entomology at London which gives identification services. Thus, it becomes clear that inspection is also necessary apart from fumigation or disinfestations, which is a separate process. The contention advanced on behalf of the petitioners in this regard therefore, requires to be rejected.

8. 1 we shall now take up the contention that no services are rendered to the petitioners inasmuch as the whole object of the Act is only to protect the plant life in India and prevent alien insects, fungus and pest which might be introduced into the Country through imported articles contaminated with them or carried by them. In *Sirsilk Ltd. Vs. Textiles Committee and Others*, a specific argument was raised that no individual trader was receiving benefit from the services rendered. This contention is similar to the one which we are dealing now. Considering the scope of the Textile Committee and the Rules thereto, the Supreme Court held that the purpose therein was quality control of textile while facilitating the growth and development of the textile industry. The provision therefore was interpreted as benefiting the textile industry as such though it has no specific relation to the particular industry which bears the burden of levy. It was held that

there is broad correlation between the imposition of the fee and the nature of the services rendered to the entire Textile Industry answering the test of quid pro quo though no specific service was rendered to the trader. The administrative expenses incurred by the Committee from the fund was held to be an integral component of the fund. Similar view was taken by the Supreme Court in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, and *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, This is a complete answer to the contentions advanced on behalf of the petitioners.

8.2. We may also refer to certain other aspects involved in the matter. Timber logs cannot be imported except under permit and subject to certain controls. The petitioners cannot import any kind of timber logs except those which pass through the test. When there is restriction to import any kind of timber log and only such timber logs which are allowed to be imported can be imported by the petitioners, certainly petitioners derive an advantage or privilege over others in respect of such a service. In the present case, Section 3(3) of the Act empowers the Central Government to prohibit or regulate or restrict the import of any article likely to cause infestation to any crop by any insect or class of insects. Such restriction may be imposed with reference to the Country of origin, routes by which they are imported or other wise. Sub-section (3) empowers the Central Government to levy and collect fees in such rates and in such manner as specified therein for making an application for a permit to import or for making inspection, fumigation etc. Thus, the imported goods by reason of going through the inspection prescribed, importers gain advantage over others. In order to get such an advantage the petitioners have to under go appropriate quarantine procedures. Therefore, the petitioners cannot contend that there is no advantage or service rendered to them. On this basis also, there is no merit in the contention advanced on behalf of the petitioners and the same is rejected.

9. If we too narrowly interpret the provisions of the Act, we will be defeating the very purpose of the Act. This enactment under consideration is on the statute book in pursuance of Article 51 of the Constitution wherein international treaty obligations have to be honoured and also in exercise of its power under Article 253 of the Constitution which empowers the Parliament to legislate on a subject which gives effect to international obligations. The enactment itself having emanated as a result of certain, conventions at the international level providing for quarantine procedures, such procedures have got to be followed. Without such procedures there can be no import of timber logs. Therefore, the objective of levy is in public interest even if no service is rendered to the petitioners. When a fee is levied in public interest, in a process which results in a privilege or advantage to petitioners, it cannot be said that authority to collect fee is lacking on the ground that no service is rendered to petitioners. This is the third ground to reject the contention of petitioners relating to lack of authority to levy fee in the absence of service.

10. We shall now take up the last contention that there is no quid pro quo between the service rendered and the fee levied. It is contended that the collection made by the respondents is so disproportionately high and is unrelated to the objective stipulated. It is urged on behalf of the petitioners that though elaborate reference on this aspect of the matter has been made by the Madras High Court in Deepak Shah's case referred to earlier, the figures relied upon in that regard are not accurate. It is submitted that, as a matter of fact, during pendency of the proceedings there were several Interim Orders granted by the Court, and thus the collection was too low when compared to the expenditure incurred. We do not wish to examine the matter from that angle as ever since levy was imposed there have been challenges before Courts and figures are not available for atleast three to five years regarding receipts and expenditure. Hence, no definite conclusion on that basis can be drawn. Material has been placed before us to show that the petitioners incurred certain establishment expenses as indicated in Annexure R11 which comes to about Rs. 5038/- per consignment of 100 metric tonnes. This calculation was made on the basis of the emoluments drawn as on 1.1.1989. The rate at which the petitioners are charged is Rs. 40/- per metric tonne. Therefore, it comes to around Rs. 10/- less than the expenses that is likely to be incurred by the respondents. It is not necessary to go into the other questions raised by the parties as to whether the expenses could also be incurred towards capital expenditure or not for, the levy of fee in the present case is for the purpose of the entire establishment charges which is maintained as inspection staff and the equipment processed by them. At this stage, we cannot say that the collection made by the respondents is in far excess of the requirement. On the, other hand, it is much lower considering the other expenses that are involved in the process. Therefore, we do not wish to refer to the other Decisions or Precedents cited by the parties concerned to support their respective cases that even in case of capital expenditure whether the same could be incurred or not and what is the extent to which such expenditure could be incurred. If and when necessary, at an appropriate stage, if the petitioners appropriately challenge the same that aspect can be considered. At this stage, it is unnecessary to go into that aspect. On the material on record, we must come to the conclusion that there is sufficient broad correlation between the collections made and the expenses incurred by the respondents.

11. Thus we find no merit in any of the contentions advanced on behalf of the petitioners. These Petitions shall stand dismissed- It is open to the respondents to enforce the bank guarantee that may be still in force. Otherwise it is needless to say that the recovery proceedings could be initiated as available under law.

Rule discharged.