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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1708/2016 & C.M.Nos.7319-7320/2016

INDIA TIMBER & SEASONING PLANT (PROP JAIKASHI
TRADING COMPANY PVT LTD) Petitioner

Through Ms.Prema Priyadarshini with
Mr.Pradyot Pravash, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through Ms.Manuja Gandhi with Mr.Sumit
Rajpoot and Mr.Himanshu Dubey,
Advocates.

Date of Decision: 08th March, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 26th October, 2015 issued by the Deputy Secretary, Government of India, Ministry of Agriculture and Farmers Welfare, directing the Plant Protection Advisor to file an FIR against the importer and exporter of the timber consignment as the Phytosanitary Certificate of the Exporter was forged.

2. Ms.Prema Priyadarshini, learned counsel for petitioner states that for a meager amount of Rs.5000 to Rs.6000 generally spent for the fumigation of the timber in the exporting country, the petitioner would not have procured a forged certificate.

3. She submits that for fault of an exporter, petitioner who is an importer cannot be blamed. In support of her contention, she relies upon Rules 3(16), 3(17), 9(1), 9(2) and 14(1) of the Plant Quarantine (Regulation of Import into India) Order, 2003 [hereinafter referred to as "Quarantine Order"]. The said Rules are reproduced hereinbelow:

"16. The Plant protection Adviser or the officer authorized by him may, after inspection and laboratory testing, fumigation, irradiation, disinfection or disinfestations, as may be considered necessary by him, accord quarantine clearance for the entry of a consignment or grant provisional clearance for growing under post-entry quarantine, as the case may be in form PQ 16 and or order deportation or destruction of the consignment in form PQ 17 in the event of non-compliance with the restrictions and conditions specified in this Order.

17. Where fumigation or disinfestations or disinfection is considered necessary in respect of a consignment of plants, seeds and fruits the importer shall on his own and at his cost arrange for the fumigation, disinfection or disinfestations of the consignment, through an agency approved by the Plant Protection Adviser under the supervision of an officer duly authorized by the Plant Protection Adviser in that behalf."

"9. Requirement of Import of Wood and Timber:

(1) Notwithstanding that no import permit is required under these rules in respect of any consignment of wood or timber of plant specified in Schedule VII, no such consignment shall be brought into India unless such consignment fulfills the following conditions, namely:-

- (i) the wood with bark shall be fumigated prior to export with methyl bromide at 48 g/m³ for 24 hrs at 21°C or above or equivalent thereof or any other treatment duly approved by the Plant Protection Adviser and the treatment shall be endorsed on the Phytosanitary certificate issued thereof at the country of export; or*
- (ii) the timber or sawn or sized wood (without bark) prior to*

export shall be either fumigated as above or kiln dried or heat treated at 56°C for 30 min (core temperature of wood) and appropriately marked as 'KD' or 'HT', as the case may be, and in such instances no Phytosanitary certificate shall be required, but a treatment certificate issued by the approved agency shall be required to be produced before the Plant Protection Adviser.

- (2) All the consignments of timber shall be inspected on board prior to unloading at the port of arrival by an officer duly authorized by Plant Protection Adviser and, if necessary, fumigated or treated on board before unloading:

Provided that no such inspection shall be necessary in case of containerized cargo."

"14 Relaxation conditions of Import Permit and Phytosanitary Certificate in certain cases-

- (1) The Central Government may, in public interest, relax any of the conditions of this Order relating to the import of any consignment. The Joint Secretary in-charge of Plant Protection in the Department of Agriculture & Cooperation shall be the competent authority for according the relaxation. Further, the powers of relaxation has been delegated (vide DAC Lt. No.8-5/2004-PPL (pt) dated 2nd February 2005) to officers in charge of the Plant Quarantine Stations for relaxing the conditions of Import Permit and Phytosanitary certificate required as per Plant Quarantine (Regulation of Import into India) Order, 2003 as a one-time exception in favour of a single party and not for repeated violations by that party. All second or subsequent cases of violation of requirement of Import Permit and Phytosanitary certificate by any party shall be forwarded to Joint Secretary (Plant Protection), Department of Agriculture & Cooperation"

(emphasis supplied)

4. On the other hand, learned counsel for the respondents contends that no import of consignment of timber can be permitted into India unless accompanied by the original Phytosanitary Certificate issued by an authorized officer at the country of origin. In support of her contention, learned counsel for the respondents relies upon Rule 3 (20) of the Quarantine Order. The same is reproduced hereinbelow:-

“3. Permits for Import of plants, plant products etc.

(20)No consignment shall be permitted import unless accompanied by a original copy of the Phytosanitary Certificate issued by an authorized officer at the country of origin in the form PQ 21 or at the country of re-export in form PQ22.”

(emphasis supplied)

5. She also points out that as the petitioner was a repeat offender, the petitioner’s application for relaxation of conditions of Import Permit and Phytosanitary Certificate was referred to the Department of Agriculture and Cooperation.

6. Upon a query being raised by this Court, learned counsel for the respondents states that the Govt. of Ivory Coast has confirmed that a Phytosanitary Certificate issued to the petitioner is fraudulent. An e-mail in this regard handed over by the learned counsel for the respondents to this Court is reproduced hereinbelow:-

“.....Original Message.....

From angele yao<affiensamu@yahoo.fr>

Date: Oct 23, 2015 2:01:10 PM

Subject: Re: Regarding PSC

To: Anita<anita.puri@nic.in>.SILUE

GNENEYERI<gnesilue@yahoo.fr>

Cc: "isyspht@aviso.ci" <isyspht@aviso.ci>.us
ppII <bp.bimal@gov.in>

Hello Madam/Sir

I regret to inform you that the phytosanitary certificate concerned is a fraudulent certificate. Mr. Coulibaly LASSINA is retired. It therefore can not sign certificates."

With Kind regards

YAO Amenan Angele

Ingenieur Agronome

Ministere de l'Agriculture (MINAGRI) de la Cote d'Ivoire

Direction de la Protection des Vegetaux, du Controle et de la Qualite (DPVCQ)

Chef du Service de l'Inspection Phytosanitaire au Port Maritime d'Abidjan."

7. Having heard the learned counsel for the parties, this Court is of the view that in accordance with the Plant Quarantine Order, timber has to be fumigated by the exporter. Rules 3 (20) and 9 (1) make it abundantly clear that fumigation prior to export is mandatory. No importer can state that because the timber has been fumigated in India, it should not be sent back to the country of origin.

8. Though, undoubtedly the power of relaxation is contained in the Quarantine Order, yet it has to be exercised for some cogent reasons and that too, in larger public interest. In fact, as pointed out by the Supreme Court in ***Union of India and Others Vs. Exim Rajathi India Private Limited, (2009) 16 SCC 263***, import of food and trees can be dangerous both for humans as well as for agriculture. This Court is also of the view that even if the fault cannot be attributed to the petitioner for non-fumigation by the exporter, the consignment in

question cannot be allowed to remain in India as firstly, it would lay down a wrong precedent and secondly, non-fulfillment of mandatory condition of fumigation at exporter's end could have serious ramification for our flora and fauna as well as environment in general.

9. Consequently, this Court is of the view that the impugned order calls for no interference. However, the petitioner is given liberty to sue the exporter for damages in accordance with law.

10. Accordingly, the writ petition and the applications stand disposed of.

MARCH 08, 2016
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MANMOHAN, J

