Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19 OF 2002

Omprakash Nagoja
carrying on business in the name of
O.P.M. International, as a sole proprietor and
having office at 30/D Wadia Building,
9/B Cawasji Patel Street, Fort, Mumbai-400 001
and branch office at Hyderabad. … Petitioner

Versus

1. Ranger Forest, Bombay Range Office, having its office at L.B.S. Marg, Naupada, Thane (W), Maharashtra.

2. Deputy Forest Officer, the Divisional office, Thane, having his office at L.B.S. Marg, Naupada, Thane (W).

3. Conservator of Forest, Dist. Thane having its office at Kopari Gaon, Bara Bungalow, Thane (E), Dist. Thane.

4. The State of Maharashtra, through the Additional Pleader, having his office at Old P.W.D. Bldg., Fort, Mumbai.

5. Container Corporation of India Ltd. a public company incorporated under Companies Act of 1956 and having its office at C.F.S., Mulund, Mumbai.

6. Collector of Customs, J.N.P.T., Navasheva, having his office at Navasheva. …Respondents

Mr. Vishal Phal a/w. Ms. S.P. Trivedi i/b. A. Bharat & Co. for the petitioner.
Ms. Shruti D. Vyas, 'B' Panel counsel for the State.

CORAM: G. S. KULKARNI &
RAJESH S. PATIL, JJ.
DATED: 16 June, 2023

JUDGMENT (Per G.S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India challenges the action of the Forest Department of the Government of Maharashtra/respondent nos. 1 to 4 in charging transit fees from the petitioner for transportation of the goods in question, which is timber, imported by the petitioner from a foreign country and sought to be cleared from the Jawaharlal Nehru Port Trust (JNPT) at Navasheva, Uran, District Thane.

2. The question which arises for consideration in the present case is as to whether timber – a forest produce imported by the petitioner can be transported freely without payment of transit fees from the port of arrival - JNPT at Nava Sheva, Uran District Raigad to the Customs C.F.S. (Container Freight Station) at Mulund in Mumbai.

3. As seen from the prayers as made in the petition, the prayers are confined to goods under bill of lading No. PONLGYEOO421842 dated 29 October, 2001. The prayers as made in the petition reads thus:

> *"a) That this Hon'ble Court will be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of Constitution of India, directing the respondent nos. 1 to 4, their officers and subordinates to withdraw and/or revoke the impugned*

order dated 27.12.2001 and release the goods under bill of lading No. PONLGYEOO421842 dated 29 October, 2001.

b) That the writ of mandamus or writ in the matter of mandamus or any other appropriate writ direction and order be issued by this Hon'ble Court under Article 226 of Constitution of India, restraining respondent nos. 1 to 4 and their officers from charging any transit fee and penalty amount as demanded in the letter dated 27.12.2001. From the petitioner in respect of the said goods transshipment to C.F.S. Mulund which are the subject matter of the bill of lading no. PONLGYE00421842.

c) That the writ of mandamus or any appropriate writ direction order be issued by this Hon'ble Court directing the respondent no. 5 to waive the demurrage/detention charges for the said goods at transshipment at Mulund which are the subject matter of the bill of lading no. PONLGYE00421842.

d) That pending the hearing and final disposal of the petition the Honourable Court will be pleased to order and direct respondent nos. 1 to 4 therein, officers and subordinates to release the goods imported by the petitioner under O.G.I. at C.F.S. Mulund under bill of lading no. PONLGYE00421842 forthwith without demanding any charges. Pursuant to the demand notice dated 27.12.2001."

4. This petition was admitted by an order dated 10 January, 2002 passed by a co-ordinate Bench of this Court, which also granted interim reliefs to the petitioner. The said order reads thus:

"Heard parties.

Rule.

Considering the prima facie case established by the petitioner, ad-interim relief in terms of prayer clause (d) is granted subject to the payment of entire charges pursuant to the demand notice dated 27 December, 2001. Payment should be made within 15 days from today. Needless to mention that the payment shall be subject to the result of the petition."

5. Learned counsel for the petitioner has fairly stated that as the petition stands today, the petitioner seeks reliefs in terms of prayer clauses (a) and (b) of the petition.

6. By virtue of the said interim order, the Court directed respondent nos. 1 to 4 to release the goods imported by the petitioner from the C.F.S. Mulund, however, subject to payment of the entire amounts demanded under the impugned demand notice dated 27 December, 2001 and such payment as made by the petitioner was subject to result of the present petition.

7. The facts appear to be not in dispute. On 29 October, 2001, the petitioner imported timber under O.G.L. from Ecuador. The consignment reached Jawaharlal Nehru Port Trust (for short **"JNPT"),** Navasheva port on 17 December, 2001. As per the bill of lading, the goods were to be delivered at C.F.S, Mulund. The goods were accordingly to be trans-shipped from JNPT to C.F.S, Mulund by respondent no. 5-Container Corporation of India Ltd. as averred in the petition. The petitioner had filed a bill of entry for home consumption at "CFS, Mulund" through his clearing agent as per the provisions of Customs Act on 19 December, 2001.

8. On 20 December, 2001, the petitioner through his custom clearing agent made an application to respondent no. 3-Divisional Conservator of

Forest, Thane for permission under the Indian Forest Act, 1927 for transportation of the imported timber from C.F.S, Mulund as also for transportation to the various places in India. At such point of time, the petitioner received a demand notice dated 27 December, 2001 from the Forest Department calling upon the petitioner to pay transit pass fees for the trans-shipment of the goods at the rate of Rs.2,500/- per container and Rs.500/- towards penalty. The petitioner by a letter dated 1 January, 2002 replied to the demand notice contending that the demand was illegal and not sustainable, as the petitioner had completed its import at C.F.S, Mulund and the petitioner was entitled to trans-ship the goods from JNPT to C.F.S, Mulund, i.e., from one port to C.F.S, Mulund (another port), which would be considered as a custom area, the petitioner hence requested the Forest Department to withdraw the demand. It is necessary to extract the petitioner's letter dated 1 January, 2022, which reads thus:

> "This is in reference to your letter No.K-21\sales\6567\01-02 dt.27/12/2001 regarding your alleged demand for Rs.2, 500.00 per container as fees for T.P. and Rs.500/- towards penalty under forest Act 1927 Sec.41 (2) B and forest Act 1942 sec.66. We would like to inform you that the above said consigment is imported by us for delivery at CFS MULUND and prior to that the cargo movements is under control and handled by shipping company/Agents and CONCOR under rules and regulation framed under Customs Authority.
>
> Therefore, if there is any compliance regarding TRANSIT PERMIT requirement prior to delivery of the cargo to us at nominated place of delivery i.e. at CFS Mulund, you should suppose to be intimated to the Bunder (PORT) within the meaning of CUSTOM Rules and is exempted under section 41(a) of Bombay Forest Act, 1942 from removal of the cargo within the area of PORT/landing place /

> railway station. **Hence movement of the containers from NAVA SHEVA PORT to CFS Mulund is the matter of internal moement of the cargo under the strict control and supervision of Customs and Port authority.**
>
> Therefore, your act of detaining the cargo is illegal and we held you fully responsible for the losses suffered by us on account of container detention Ground rent etc. payable to shipping company and CONCOR for this delay. We therefore request you to please release the cargo immediately to avoid further losses."
>
> (emphasis supplied)

9. As the demand was not withdrawn, the petitioner approached this Court by the present petition and as noted above, under the interim orders, the goods were conditionally released.

10. The primary contention as urged by the petitioner and as seen from the grounds raised by the petitioner is that the demand notice dated 27 December, 2001 issued by the Forest Department was illegal inasmuch as such demand of transit pass fee could not have been made in respect of goods which were imported by the petitioner and more particularly directly from JNPT port to C.F.S. Mulund for the purpose of clearing. This, more particularly, when such goods were sought to be cleared after payment of customs duty, hence, even if there was a transfer of the goods from the port where the goods landed, i.e., JNPT port at Navasheva and the same being transferred to C.F.S. Mulund, which was within the municipal jurisdictio9n of Greater Mumbai, the demand for transit fees was illegal. The petitioner has hence contended that the impugned action on the part of the respondent-Forest Department was violative of the rights of the petitioner guaranteed under Articles 14, 19 and

300A of the Constitution. It is contended that Section 66 of the Bombay Forest Rules, 1942 was applicable for inter state movement of goods and not from one port to another port, considering that the C.F.S. at Mulund itself was a port, hence there was no question of the requirement for payment of any transit fees. It is also contended that earlier for the import in question, such transit fees were not demanded by the Forest Department, therefore, to demand such transit fees in relation to the consignment in question was illegal.

11. On behalf of the respondent, a reply affidavit of Shri Gurunath Kisan Anarse, Assistant Conservator of Forest, Thane Forest Division dated 14 February, 2002 is filed. By such affidavit, the Forest Department has contended that the action of the Forest Department to issue the demand notice dated 27 December, 2001 to the petitioner was legal, valid and proper. It is as per the provisions of Indian Forest Act, 1927 and the Rules framed thereunder. It is contended that the clearance/import of timber is not completed at the point of place of clearance as defined under Section 2(9) of the Customs Act, 1962, hence the petitioner was liable to pay the transit pass fees for movement of the container from Navasheva Port to C.F.S. Mulund as per the provisions under the Indian Forest Act, 1927 and the Bombay Forest Rules, 1942. It is contended that the circular issued by the Central Board of Excise and Customs dated 8 May, 1996 stands independent of the provisions under the Indian Forest Act, 1927 and the Bombay Forest Rules, 1942, which are applicable in

the present case. It is contended that under Rule 85(1) of the Bombay Forest Rules, 1942 read with provisions of Indian Forest Act, 1947, the forest produce cannot be cleared, without payment of such fees. It is next contended that as as per the Government Resolution dated 22 February, 2001, the petitioner was liable to pay transit fee @ Rs.2,500/- per container. Also the provisions of Section 8 of the Customs Act, 1962 would not be applicable to the present facts, as the Custom Act, Indian Forest Act and the rules framed thereunder stand independent of each other and operate distinctly. For such reasons, the petition be dismissed.

12. There is an additional affidavit dated 22 July, 2022 filed on behalf of the petitioner inter alia placing on record the procedure of the Forest Department under Circular dated 6 January, 1996 for issuance of transit pass and further affidavit dated 4 August, 2022.

13. Learned counsel for the petitioner has submitted that the levy of the transit fees in regard to the imported timber was illegal by the respondents is arbitrary and illegal, as contended in the petition. It is his submission that the provisions of Indian Forest Act as also the Bombay Forest Rules as relied on behalf of the respondent would not assist the respondent to contend that the respondents have any authority in law to charge the transit fees for transportation of timber from JNPT to C.F.S. at Mulund. It is also his

submission that the Government Resolution dated 22 February, 2001 on the basis of which such fees were demanded also cannot be applied in the petitioner's case.

14. On the other hand, learned AGP has taken us through the reply affidavits as placed on record. She has also referred to the Government resolutions to contend that the State Government has authority and power to impose the transit fees. It is her submission that the transportation was domestic transportation of forest goods and it could not have been said that the entire transport between the Navasheva Port to C.F.S. Mulund was a transport within the port area. It is her submission that the policy of the Government as contained in the Government Resolution dated 22 February, 2001 was clearly applicable. It is also her submission that the provisions of the Indian Forest Act, 1927 and the Bombay Forest Rules, 1942 authorise the Forest Department to recover transportation costs and fees for such purpose. It is thus her submission that the petition be dismissed.

15. We have heard learned counsel for the parties. We have also perused the record. At the outset, we may note that the prayers as made in the petition are simplicitor in regard to the demand notice dated 27 December, 2001 as made by the Forest Department that the same be set aside and that the goods in question under bill of lading dated 29 October, 2001 be released and for a

further relief that the Forest Department be restrained from charging any transit fee and penalty amount as demanded in the letter dated 27 December, 2001. The transit fees are already paid by the petitioner while clearing the goods. Thus, the question which remains for decision is whether the petitioner would be right in his contention on the levy so as to entitle him for the refund of the transit fees paid by him.

16. It may be observed that for the petitioner to succeed in assailing the demand as raised by the respondents by their letter dated 27 December, 2001 have not in any manner assailed Government Resolution dated 22 February, 2001 under which such transit charges are sought to be levied and collected for transportation of goods which are forest produce. Thus, it would be required to be presumed that the petitioner has no grievance in regard to such directives of the State Goverment, which empower the State Government to charge the transit fees.

17. This apart, on persual of the provisions of Indian Forest Act, 1927, more particularly provisions of Section 41 read with provisions of the Rules which fall under Chapter VI of Bombay Forest Rules, 1942, more particularly Rule 66, Rule 85 and Rule 89, providing for "Transit of Forest Produce" and it is clear that the Forest Department has the requisite authority and power, to issue transit pass and also provide for appropriate conditions including to charge

transit fees when it comes to domestic transportation of forest produce. It may be appropriate to extract the said provisions which reads thus:

> ***"Section 41 Power to make rules to regulate transit of forest produce***
>
> ***(2)*** *In particular and without prejudice to the generality of the foregoing power such rules may-*
>
> *(a) …..*
>
> *(b) <u>prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass</u>;*
>
> *(c) …..*
>
> *(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the [Government] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark."*

> *"Rule 66 -* ***Regulation of transit of forest produce by means of passes***
>
> *No forest produce shall be moved into, or from, or within any district of the [pre-Reorganisation State of Bombay excluding the transferred territories], except as hereinafter provided, without a pass from some officer or person duly authorised by or under these rules to issue such pass, or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route or destination specified in such pass:*
>
> *Provided that no pass shall be required for the removal-*
>
> *(a) except to a bunder, landing place or railway station-*
>
> *(i) <u>of any forest-produce which is being removed for private consumption by any person in exercise of a privilege granted in this behalf by the State Government, or of a right recognized under the Act, within the limits of a village as defined in the Bombay Land Revenue Code, 1879, in which it is produced</u>,*
>
> *(ii) of twigs, leaves, brushwood and grass intended solely for conversion into ash-manure,*
>
> *(iii) of such small branches as are given gratis from departmental cuttings solely for private consumption,*
>
> *(b) of firewood not exceeding three inches in diameter at the thickest part, grass or leaves, the property of one person or the joint*

property of two or more persons, which is conveyed in quantities not exceeding one headload once in 24 hours unless it be brought to a bunder, landing place or railway station or to any areas to which the State Government may from time to time declare by notification in the Bombay Government Gazette that this exemption shall not extend, or

(c) of such forest-produce as may be exempted by the State Government from the operation of the rules in this Chapter by notification in the Bombay Government Gazette.

Rule 85 - Forest-produce in transit may be stopped and examined by certain officers.

(1) Forest-produce in transit may be stopped and examined at any place by any forest, police or revenue officer if such officer shall have reasonable grounds for suspecting that any money which is due to Government in respect thereof has not been paid, or that any forest offence has been or is being committed in respect thereof :

Provided always that no such officer shall vexatiously or unnecessarily delay the transit of any forest-produce which is lawfully in transit, nor vexatiously or unnecessarily unload any such forest-produce, or cause the same to be unloaded for the purpose of examination.

(2) <u>The person in charge of such forest-produce shall furnish to any such officer all the information which he is able to give regarding the same, and if he is removing the same under a pass shall produce such pass, on demand, for the inspection of such officer, and shall not in any way prevent or resist the stoppage or examination of the said forest-produce by such officer</u>."

(emphasis supplied)

18. It is thus clear from the statutory provisions that there is sufficient authority and power with the Forest Department to make rules to regulate transit of forest produce as provided under section 41 of the Indian Forest Act. Further, the transit of forest produce is clearly regulated by Rules 66 and 85 as noted above. Thus, transportation of the forest produce which would include timber certainly can be regulated, by issuing pass/transit permit. The petitioner had accepted such position and the mandate of the rules when the

petitioner made an application for a transit permit/pass, which was not only for the transportation of the imported timber from the JNPT Port to the C.F.S. at Mulund. This clearly establishes the position that for any movement of the forest goods in the absence of transport permit/pass, would be illegal, was acknowledged by the petitioner. It is also not the case of the petitioner that the petitioner's timber as it lay at the JNPT were customs cleared goods, as they were being transported to another customs area at the C.F.S. Mulund. Thus, the petitioner could not have expected that the forest department looses the regulatory control to oversee the transportation of the timber from JNPT Port to CFS Mulund, for which transit fee was legitimately prescribed as permissible in law, on which the petitioner has no quarrel. Even on first principles the petitioner cannot expect that the petitioner could have a free and/or a non-supervised transportation of forest produce. The consequences of free or unregulated transportation of forest produce without any survillance of the forest department is just to be imagined. Any free movement of the regulated forest products would defeat the provisions of the Forest Act and the rules made thereunder.

19. Thus, applying such provisions to the facts of the case, in our opinion, the petitioner's primary contention that the transportation of timber as imported by the petitioner from the JNPT port to C.F.S Mulund would be

required to be construed as a transport fully within the customs area, so as to exempt the petitioner from levy of fees, is totally unsustainable. The petitioner has not placed on record any material that the entire corridor of such transportation is notified as customs corridor so that the Forest Department itself has no authority whatsoever, to have any supervision of transportation of the forest produce. Certainly when the goods of the petitioner are sought to the transferred from JNPT to C.F.S. Mulund, the destination is to a jurisdiction at Mulund, which is within the municipal limits of Greater Mumbai, which is a different district. Certainly, such transportation is a transportation in a free domestic area, hence in the absence of any contrary material, it is required to be assumed that passage through such area would certainly be not exclusively within customs area/corridor, in which no other authorites except the customs would be authorized and empowered to regulate any transportation. Once this is the established position on record, then certainly the Forest Department would have all jurisdiction to regulate a transport of the forest produce, the moment the goods are to be taken outside the JNPT area for the transportation through road, till it reaches the CFS, Mulund.

20. It is not in dispute that within the jurisdiction of the port, the Forest Department is not claiming any transit fees, as also it is not claiming any transit fees for any transportation within the limits of CFS Mulund. What is sought to be charged are transit fees for the area and distance outside the customs

jurisdiction at JNPT port and till it reaches the customs jurisdiction at CFS, Mulund. So was the application of the petitioner for a transport permit. Thus, it is untenable for the petitioner to contend that such transportation would be wholly covered under the Customs Act and the Forest Department would not have any jurisdiction to levy such transit fees as governed by the Indian Forest Act, 1927 and Bombay Forest Rules, 1942 in question, as noted above.

21. In any event, the petitioner has not assailed any statutory provisions either under the Act or rules on any ground or the Government Resolutions which were applied in charging the transit fees. The prayers as made by the petitioner without challenging the Government Resolution dated 22 February, 2001 coupled with the statuory powers as confered under the Act, being the foundation for the demand the transit fees, certainly needs to fail.

22. In view of the above discussion, the petition deserves to be rejected. It is accordingly dismissed.

23. At this stage, learned counsel for the peitioner submits that the petitioner be permitted to apply for a refund on the quantum of transit fees paid, as according to the petitioner, he was required to be charged at a reduced rate under the Government Resolution dated 22 February, 2001. As the present proceedings were pending, in our opinion, the petitioner can be

permitted to make an application for refund of any excess fees, which shall be considered by the State Government in accordance with law. If any application is moved within six weeks from today, the same be decided by the concerned Forest officer within six weeks thereafter.

24. Rule is accordingly discharged. No costs.

(RAJESH S. PATIL, J.) (G. S. KULKARNI , J.)