



WEB COPY



W.P.Nos.18342 and 18346 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.18342 and 18346 of 2023
and

WMP.Nos.17545 and 17546 of 2023

M/s. BayM Trade Pvt. Ltd.,
Represented by its Director,
Shri. Rohit Sukumar,
No.15/6, Brewery Road,
Shenoy Nagar, Chennai 600 030.

.. Petitioner in both

WPs

Versus

1. Union of India
Represented by its Under Secretary,
Ministry of Agriculture and Farmer's Welfare,
Welfare Department of Agriculture,
Krishi Bhavan, New Delhi.
2. The Plant Protection Officer,
Regional Plant Quarantine Station (RPQS),
GST Road, (Near Trident Hotel),
Meenambakkam, Chennai - 600 027.

.. Respondents in both WPs

Prayer in WP.No.18342 of 2023:- Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, call for the records

<https://www.mhc.tn.gov.in/judis>



W.P.Nos.18342 and 18346 of 2023

pertaining to the impugned Office Memorandum in O.M.No.8-131/2016-PP.II dated 01.07.2019 issued by the first respondent and quash the same so far as it relates to condition no.(iii) of the said impugned Office Memorandum.

Prayer in W.P.No.18346 of 2023:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that the impugned Clause 14(2) of Chapter VI of the Plant Quarantine Order (Regulation of Import into India), 2003, issued by the first respondent, as ultra vires being violative of Article 19(1)(g) of the Constitution of India and illegal.

For Petitioner : Mr.G.Derrick Sam in both WPs

For Respondents : Mr.V.T.Balaji,
Senior Panel Counsel in both WPs

COMMON ORDER

(Order of the Court was made by **R. MAHADEVAN, J.**)

The petitioner is an importer importing timbers from various foreign countries. They are regularly importing timbers from Cameroon and Columbia and sell them locally. While so, it has placed an order for import of timber from Columbia and the said consignment has been covered by Invoice No. FA-34 dated 18.06.2019 under Bill of Lading No.BGA0250829 dated 20.06.2019. As per Clause 9 of the Plant Quarantine (Regulation of Import into India) Order, 2003, if any timber, wood or bamboo is imported into India, the same has to be



W.P.Nos.18342 and 18346 of 2023

fumigated with Methyl Bromide. The said Methyl Bromide is an ozone depleting substance and is banned in many countries including Columbia from where the petitioner imports timber. As the condition of fumigating the timbers is not possible in many countries, the second respondent herein has issued Office Memorandums dated 30.03.2017, 28.06.2017, 29.12.2017, 26.06.2018 and 27.12.2018 in exercise of powers provided under Clause 14(2) of Chapter VI of the Plant Quarantine Order, 2003, imposing a penal fee calculated at the rate of four times of the normal rates prescribed, for relaxing the off-shore fumigation. Subsequently, the second respondent herein has issued the Office Memorandum dated 01.07.2019 wherein they have changed the words “penal fee” into “inspection fee” and continue to charge the same penal charge at the rate of four times of actual inspection fee. The petitioner has challenged the Office Memorandum dated 01.07.2019 before the writ Court in W.P.No.22976 of 2019 and thereafter cleared the subject consignment covered under Bill of Lading No.BGA 0250829 dated 20.06.2019 on payment of 50% of the inspection fee payable under Clause 14(2) of the Plant Quarantine Order, 2003 and on execution of a personal bond for the remaining 50% as per the interim order of this Court dated 07.08.2019. The petitioner has cleared the consignment on 16.08.2019 vide Bill of Entry No.4360666 dated 05.08.2019. However, by order dated 16.08.2022, the main writ petition was dismissed



W.P.Nos.18342 and 18346 of 2023

with liberty to the petitioner to challenge the Plant Quarantine (Regulation of Import into India) Order, 2003.

2. With the above background, the present two writ petitions viz., W.P.Nos.18342 and 18346 of 2023 have been filed by the petitioner before this court. While W.P.No.18342 of 2023 has been filed challenging the Office Memorandum in O.M.No.8-131/2016-PP.II dated 01.07.2019 issued by the second respondent and quash insofar as the condition no.(iii) of the same, W.P.No.18346 of 2023 has been filed to declare the impugned Clause 14(2) of Chapter VI of the Plant Quarantine (Regulation of Import into India) Order, 2003, issued by the first respondent as ultra vires being violative of Article 19(1)(g) of the Constitution of India.

3. The learned counsel for the petitioner submits that as per Clause 14(2) of the Plant Quarantine Order, in the event of granting relaxation by the competent authority, the consignment will be released on payment of plant quarantine inspection fee calculated at the rate of five times the normal rates, but as per Clause 9(1)(ii) of the Plant Quarantine Order, 2003, the fumigation treatment which is equivalent to the fumigation treatment with Methyl Bromide is permissible. Therefore, Clause 14(2) of the Plant Quarantine Order, 2003 is



in contradistinction with Clause 9(1)(ii) of the Plant Quarantine Order, 2003 and the same has to be struck down. It is further submitted that Condition No.(iii) of the impugned office memorandum is arbitrary since the respondents are well aware about the impossible condition imposed under the Plant Quarantine Order. It has been specifically pointed out by the learned counsel that the consignments were subjected to off-shore aluminium phosphide fumigation, which is equivalent to Methyl Bromide for which the petitioner has been issued with Phytosanitary Certificate by the exporting country which undertakes fumigation by any other equivalent agent to Methyl Bromide and therefore, the petitioner cannot be faulted with for importing the timber fumigated with other chemicals. Finally, it has been submitted that the High Court of Gujarat, in its decision in W.P.Nos.16280 of 2021 etc. batch, set aside Clause 14(2) of the Plant Quarantine Order (Regulation of import into India), 2003 and the Office Memorandum impugned therein, as arbitrary, unreasonable and in violation of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India, to the extent that it stipulates charging of fees of five times of normal rate. With these submissions, the learned counsel prayed to allow these writ petitions by setting aside the proceedings impugned in these writ petitions.

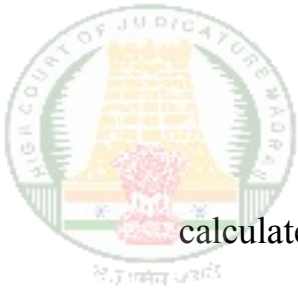
4.On the other hand, the learned Central Government Panel Counsel for



the respondents submitted that there is a strong possibility that the imported timber may carry certain harmful pests which may cause a serious threat to the bio-security of India and therefore, it is mandatorily required to be regulated as per Plant Quarantine Order, 2003. It is further submitted that relaxation fee at five times the normal fee is collected as penalty to discourage the violation of the conditions stipulated in the Plant Quarantine Order and hence, the Office Memorandum impugned herein has been passed in order to create a deterrent by enhancing the penalties in import of the commodities in violation of the Plant Quarantine Order. However, the learned Additional Solicitor General of India has produced a copy of the Notification dated 13.10.2022 making an amendment to the Plant Quarantine (Regulation of Import into India) Order, 2003, by adding the entries after the existing entries relating to Clause 5, in compliance with the decision of the Gujarat High Court.

5.Heard the learned counsel on either side and perused the records carefully and meticulously.

6.The petitioners have come up with these writ petitions challenging Clause 14(2) of Chapter VI of the Plant Quarantine (Regulation of Import into India) Order, 2003 issued by the first respondent, imposing a penal fee



calculated at the rate of four times of the normal rates prescribed and also Condition (iii) of the Office Memorandum in O.M.No.8-131/2016-PP.II dated 01.07.2019 issued by the second respondent, stating that Inspection Fee in respect of those consignments will be charged as prescribed in the Plant Quarantine Order, 2003 Chapter VI Para 14(2).

7.The decision of the High Court of Gujarat in *ND Timbers vs. Union of India, reported in 2022 (8) TMI 633*, relied upon by the learned counsel for the petitioner, administers the issue involved in the present writ petitions. In that decision, it was observed that the Office Memorandum impugned therein and the provision of Clause 14(2) of the Plant Quarantine Order, cannot be set aside on the ground of unreasonable classification; that the sole discretion lies with the authorities to classify such goods who are expert in the field; and that the Court cannot set in the shoes of such experts and impose its wisdom on the subject unless it is shown that the procedure so followed is absolutely illegal and against the rules and regulations. It has also been observed that at the same time, the petitioners therein cannot be subjected to penal fees for the inaction of the exporting countries.

8.Ultimately, it has been held by the Gujarat High Court in the aforesaid



decision that Clause 14(2) of the Plant Quarantine Order, 2003 of Chapter-VI and the Office Memorandum impugned therein, do not satisfy the principles of rationality and they infract the fundamental rights of the importer guaranteed under Article 19(g) of the Constitution of India and accordingly, held Clause 14(2) as arbitrary and unreasonable and in violation of the fundamental rights guaranteed under Article 19(g) of the Constitution to the extent that it stipulates charging of fees of five times of normal rates and resultantly, set aside the same to that extent.

9.It is also important to note that the aforesaid decision of the Gujarat High Court has been complied with by the Government of India, Ministry of Agriculture and Farmers Welfare, Department of Agriculture and Farmers Welfare, by issuing notification dated 13.10.2022, which reads as under:

"S.O.4871(E)- In exercise of the powers conferred by sub-section (1) of section 3 of the Destructive Insects and Pests Act, 1914 (2 of 1914), the Central Government thereby makes the following order further to amend the Plant Quarantine (Regulation of Import into India) Order, 2003 namely:-

1.Short title and Commencement - (1)This Order may be called the Plant Quarantine (Regulation of Import into India) (Fifth Amendment) order, 2022.

(2)It shall come into force on the date of its publication in the Official Gazette.

2.In Chapter II of Plant Quarantine (Regulation of Import into India) Order, 2003, after the existing entries relating to Clause 5 the following entries, will be added namely:-

(ii)In case of consignments requiring pre-shipment fumigation with MBr originating from countries which have phased out the use of MBr for quarantine and pre-shipment purposes, the consignment shall be released after charging the normal inspection fee. The NPPO of the



WEB COPY



W.P.Nos.18342 and 18346 of 2023

country will be required to submit relevant documents to NPPO India to establish phased out country status. NPPO India would notify the list, which would be updated regularly based on the information received."

10. In view of the above, Clause 14(2) of Chapter VI of the Plant Quarantine (Regulation of Import into India) Order, 2003 issued by the first respondent, imposing a penal fee calculated at the rate of four times of the normal rates prescribed, is declared as arbitrary and unreasonable and in violation of the fundamental rights guaranteed under Article 19(g) of the Constitution of India. Consequently, the impugned Official Memorandum dated 01.07.2019 imposing such penal fees, is set aside.

11. At this juncture, it is to be noted that the Office Memorandum in O.M.No.8-131/2016-PP.II dated 01.07.2019 issued by the second respondent has already been challenged in the earlier writ petition in W.P.No.22976 of 2019 in which the learned Judge has passed an interim order and accordingly, the petitioner has deposited the 50% demanded amount and also executed a personal bond for the balance 50% amount. Now, in view of passing the above order, the authorities are entitled to collect only the normal fees. Hence, the authorities are directed to retain only the normal fees out of the fees collected from the petitioner and refund the balance fee to the petitioner. In this connection, the petitioner is directed to make a representation to the respondents for refund of the excess fee collected along with a copy of this



W.P.Nos.18342 and 18346 of 2023

order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation from the petitioner, the respondents shall pass appropriate orders with respect to refund of the excess fee collected from them, within a period of four weeks therefrom.

12. With the aforesaid observations and directions, both the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) (M.S.Q., J.)
07.11.2023

av

Internet : Yes / No

Index : Yes/No

To

1. The Under Secretary,
Union of India
Ministry of Agriculture and Farmer's Welfare,
Welfare Department of Agriculture,
Krishi Bhavan, New Delhi.
2. The Plant Protection Officer,
Regional Plant Quarantine Station (RPQS),
GST Road, (Near Trident Hotel),
Meenambakkam, Chennai - 600 027.

R. MAHADEVAN, J
and



WEB COPY



W.P.Nos.18342 and 18346 of 2023

MOHAMMED SHAFFIQ, J

av

W.P.Nos.18342 and 18346 of 2023
and
WMP.Nos.17545 and 17546 of 2023

07.11.2023