

Sarda Plywood Ltd and Another

Vs

Union of India and Others

Special Leave Petition (Civil) No. 1277 of 1990 and I.A. No. 3 of 1990

(M. N. Venkatachaliah, K. Jayachandra Reddy JJ)

09.04.1990

ORDER

1. The question raised before the High Court, and reiterated here, was whether certain logs of timber imported by the petitioners from Korea, Burma, Malaysia etc. for use in the manufacture of plywood were amenable to quarantine regulations under the statutory notification dated October 27, 1989 issued under the provisions of an agriculture quarantine law viz., the Destructive Insects and Pests Act, 1914 (hereinafter referred to as the 'Act'). It was contended before the High Court that the quarantine regulations for the detention, inspection, fumigation, etc. of the logs of timber imported for the specific purpose of manufacture of plywood can have no nexus to the object of the Act which was prevent the introduction into India and prevent the transport from one State to another insects, fungus or other pests destructive of crops. The High Court dismissed the writ petition, in limine.

2. Section 3 of the Act, as amended by Act 6 of 1938, envisages that government may, by notification in the official gazette, prohibit or regulate, subject to restrictions and conditions as it may impose, the import into India or any part thereof or any specified place therein, of any article or class of articles likely to cause infection to any crop. The object of the Act is to prevent introduction into India of any insect, fungus or other pest destructive of crops. This is to be carried into effect by the prohibition or regulation of the import of any article or class of articles likely to cause such infestation of the crops.

3. It is the public interest that State prohibits or regulates entry into its territories harmful substances, impure food, animals or persons having contagious diseases or articles which are a potential danger to the health, safety, well being and good morals of the community or the health of the flora and the fauna. In the Statement of Objects and Reasons of the Bill it was stated :

"This Bill is the outcome of representations made by the Bombay Chamber of Commerce in 1906, and it has been prepared after consultation with experts and with a considerable number of bodies and persons interested in gardening and agriculture. It gives power to government to control the importation into British India of articles likely to cause infection to crops, and is based partly on the corresponding English Acts of 1877 and 1907, and partly on the provisions of the Indian Livestock Importation Act of 1898.

2. Action under the Bill would be taken in respect of certain crops only and would assume various forms according to the crop or the class of infection concerned. In some cases, for instance, importation would be prohibited except at certain ports, and

then after fumigation. In others, importation would have to be accompanied by certificates of freedom from diseases; while in other, importation would be allowed under a licence from the Agricultural Department."

And in the speech to move for leave to introduce the Bill Sir Edward Maclagan said :

"My Lord, the government was addressed some years ago by the Bombay Chamber of Commerce, who pointed out that most other countries had protected themselves by somewhat stringent measures from the damages done to agriculture and gardening by the introduction of destructive insects and other pests. They urged upon us that, with the increase of communications, the time had then come when similar precautions should be taken in India. 'The attention of the Chamber', they said, 'has recently been drawn to the danger of the introduction into India of insect pests, more particularly through the importation of plants from foreign countries. This danger is ever present and owing to increased communication and trade with various other portions of the world, and the more rapid transport of merchandise, the danger has now become extremely serious. It is reasonable to suppose that if some forms of virulent insect pests obtain footing here, are allowed to propagate unchecked, the damage done to the staple crops of this country will be incalculable In Europe and America very stringent precautions are now taken, and in Australia plants are thoroughly fumigated on both leaving and arriving in the country. Considering the great importance of the question, my committee strongly urge that similar precautions may be taken in India, and more particularly in Bombay... On receipt of this representation we consulted our experts and ascertained that in several cases disease had already been introduced along with imported material and that there were many destructive diseases in other countries which were likely to be introduced into India if no restrictions were imposed. We further ascertained from the customs authorities that a considerable number of packages containing fruits, bulbs, roots, seeds and plants were regularly imported into India, and it seemed clear that if steps were not taken to control such importations, considerable loss might be occasioned to the agriculture and fruit culture of this country."

"We had originally proposed to impose the necessary restrictions by a notification under the Sea Customs Act of 1878, but we found that the terms of that Act did not adequately cover the case with which we had to deal. We decided, therefore, to resort to special legislation, and the present Bill has been accordingly prepared, under which the government is armed with the power necessary for the purpose."

4. In the Encyclopedia Americana (Volume 23), the meaning of the word "quarantine" is set out :

"The word quarantine is derived from the Italian quarantina and quaranta, "forty". It originally meant the 40 day period of isolation of a ship, including cargo, passengers, and crew, when the ship came from a port that had certain epidemic diseases or if there was unusual illness among the passengers of crew. The practice of restricting the movement of travelers originated in 14th century Europe, then swept by the Black Death. Authorities realised that bubonic plague is highly contagious. They instituted regulations barring or limiting the entrance and movements of people and goods known to carry, or suspected of carrying plague. Venice led in this field.

The spread of animal and plant diseases in international traffic has similarly given rise to a series of laws known as agricultural quarantine laws and procedures. These regulations are based on known scientifically effective procedures. In those cases in which there is no certain method of preventing the introduction of a disease, the particular plant or animal is refused entry into a country."

The extent of the prohibition or regulation must be commensurate with and show a reasonable relation to the object and should not be unduly restrictive of the citizen's rights. On the effect of regulatory measures insofar as they pertain to interstate trade and commerce and the recognition of the limits of the power to prohibit or regulate, a learned author refers to the American view thus : [Lawrence F. Ebb See "Interstate Barriers in India and American Constitutional Experience", Stanford Law Review, Vol. II (1958-59)]

"The American Supreme Court has tended to display a more restrictive attitude towards local measures, even where justified by bona fide health objectives, if the laws or regulations have been drawn so broadly as to subject interstate food traders to an unnecessarily heavy burden. Granting that a State has reserved power to protect the health of its community, even though the local regulation may incidentally effect interstate commerce, the court has posed the question of degree : can the local interest be safeguarded with less burden on interstate commerce ?"

5. The Notification dated October 27, 1989 promulgated under Section 3 of the Act, inter alia, restricts the import into India of "any plant". The expression "plant" is defined in clause (i) of para 2 of the Notification to mean any plant or part thereof whether living or dead, trees, shrubs, nursery stock and included all vegetatively propagated materials. The timber logs of the kind concerned in the present case fall within this definition. That they are potential carriers of "insects, fungus or other pests" is not disputed. It is, however, contended that since after their import, the timber logs are not likely to come into contact with any crop or plant but are directly removed to the factory where plywood is manufactured there is not possibility of the insects or the fungus or the pests in them infecting any plant. 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 presupposes the potentiality of the timber logs for carrying those insects and pests.

6. There is no substance in the contention advanced by the petitioner that the purpose for which the timber logs are imported must decide the question whether the restriction should apply or not. The purpose for which they have been imported is really irrelevant.

7. Accordingly, this special leave petition is dismissed.

8. Learned counsel for the petitioner, however, contended that the quantum of the fee levied is so disproportionately high, the extent and the severity of the regulations are so unreasonable and the procedure so arbitrary and cumbersome as to amount to an unreasonable restriction on the petitioner's rights and are unrelated to the objectives to be achieved. These contentions have not been specifically taken and appropriate grounds urged in the writ petition. However, petitioner is at

liberty to take up these pleas, for whatever they are worth, in appropriate proceedings.

</html