

GUJARAT HIGH COURT

Fatesang Gimba

Vs.

State, (Gujarat)

Spl. C. As. Nos. 1932 of 1982 and 6252 and 6275 of 1983 and L. P. A. No. 211 of 1981

(A.M. Ahmadi and R.A. Mehta, JJ.)

19.03.1986

JUDGMENT

Ahmadi, J.

1. Poor Adivasis known as Kotwalias and Vansfodias have preferred these writ petitions making a grievance that they are being harassed by the officers of the Forest Department with a view to depriving them of the privileges conferred upon them by the State Government. These petitioners have their residence in reserved forests and they claim certain privileges in regard to the, collection of forest produce, including bamboos. According to them, they are privileged to collect a certain quantity of bamboos per family from the reserved forests for the purpose of making toplas, supdas; palas, etc., for their hutments and livelihood. The petitioners of writ petition No. 1932 of 1982 are residing in the forests of Umarpada and Vankal in Mangrol taluka and Mangrol, Songadh and Vyara talukas of the erstwhile State of Baroda. The petitioners of writ petition No. 6252 of 1983 are Kotwalias residing in the forests of Netrang and Jhagadia range in Mangrol and Jhagadia taluka of Broach District. The petitioners of writ petition No. 6275 of 1983 are also Kotwalias residing in the forests of Songadh-Tapti range in Songadh taluka of Surat District. Letters Patent Appeal No. 211 of 1981 arises out of writ petition No. 1412 of 1981 which was 'initiated by a businessman who was purchasing toplas, Supadas and Palas prepared from bamboos by these Adivasis. Since the officers of the Forest Department did not permit the removal of these articles from the forest area without pass or permit the said merchant demanded a writ of mandamus to restrain the officers of the Forest Department from interfering with the free transit of these articles prepared from bamboos from the forest area and for refund of the amount of Rs. 3,000/- taken as deposit from him by the officers of the Forest Department. The said writ petition was summarily rejected by P.D. Desai, J. on July 24, 1981, and it is against that order that the petitioner has preferred the aforesaid appeal. Since the questions involved in the three writ petitions as well as the appeal are identical we propose to dispose them of by this common judgment.

2. In order to understand the exact nature of the controversy it would be advantageous" to refer to some of the provisions of the Indian Forest Act, 1927 (hereinafter called 'the Act') which have a bearing. The Act was enacted *inter alia* to consolidate the law relating to the transit of forest produce and the duty leviable thereon. The term 'forest-produce' is defined in Section 2(4) as under

"Forest-produce" includes-

(a) the following whether found in or brought from, a forest or not, that is to say :

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth, apta and temburni leaves, rosha grass, rauwolfia serpentina and myrabalans; and

(b) the following when found in, or brought from, a forest, that is to say :

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds, and moss), and all parts of produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax and all other parts of produce of animals, and

(iv) peat, surface, soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);

The expression 'timber' includes trees when they have fallen or have been felled and all wood whether cut up or fashioned or hollowed out for any purpose or not; and the expression 'tree' includes palms, bamboos, stumps, brushwood and canes. It is not necessary to notice the various provisions relating to reserved forests since it is an admitted fact that all the petitioners of the three writ petitioners except the appellant are residing in reserved forest areas. It may, however, be necessary to refer to Section 26 to which our attention was drawn in the course of arguments. That Section reads as under

"26. Acts prohibited in such forests.

(1) Any person who-

(a) makes any fresh clearing prohibited by Section 5, or

(b) sets fire to a reserved forest or to a forest in a land in respect of which a notification declaring the decision of the State Government to constitute it a reserved forest has been issued under Section 4, or in contravention of any rules made by the State Government in this behalf, kindles in such forest any fire or leaves any fire burning, in such manner as to endanger such a forest;

or who, in a reserved forest or a forest in a land notified as aforesaid under Section 4-

(c) kindles, keeps or carries any fire except at such seasons as the Forest Officer may notify in this behalf;

- (d) trespasses or pastures cattle, or permits cattle to trespass;
 - (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
 - (f) fells, girdles, lops taps, or burns any tree or strips off the bark or leaves from or otherwise damages, the same;
 - (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes, any forest-produce;
 - (h) clears or breaks up any land for cultivation or any other purpose;
 - (i) in contravention of any rules made in this behalf by the State Government hunts, shoots, fishes, poisons water or sets traps or snares; or
 - (j) in any area in which the Elephants' Preservation Act, 1879, is not in force, kills or catches elephants in contravention of any rules so made;
- shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition such compensation for damage done to the forest at the convicting Court may direct to be paid.
- (2) Nothing in this Section shall be deemed to prohibit-
- (a) any act done by permission in writing of the Forest Officer, or under any rule made by the Government; or
 - (b) the exercise of any right continued under Clause (c) of Sub- Sec. (2) of Section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23.
- (3) Whenever fire is caused wilfully or by gross negligence in reserved forest, the State Government may notwithstanding that any penalty has been inflicted under this Section, direct that in such forest or any portion thereof the exercise of all rights of pasture or of forest-produce shall be suspended for such period as it thinks fit.
- (4) When a person is convicted under Clause (d) or (h) of Sub-section (1)-
- (a) a Forest Officer not below the rank of a Ranger,
 - (b) a Police Officer not below the rank of a Sub-Inspector; or
 - (c) a Revenue Officer not below the rank of a Mahalkari may evict him from the forest or land in relation to which he has committed the offence March 17, 1986.

3. The Gujarat Forest Manual (Volume III) contains Provisions in regard to forest-rights, privileges, concessions and other related matters. Part IV thereof deals with forest-privileges. Articles 73 to 91 outline these privileges district-wise. The general privileges have been set out in Article 76 which include the removal of stones and earth, fallen leaves and grass, felled timber and branchwood of felled trees of stipulated size, etc., Article 75(3) provides that the sanctioned privileges are to be enjoyed without permit or special permission from the Forest Officers, unless provided to the contrary. The subsequent Articles deal with special privileges granted district-wise and it would be sufficient if we refer to Articles 81 and 90 which deal with Broach and Surat districts. Under Article 81, for the merged areas of Rajpipla Gardeshwar and Vadi Estate special privileges include the removal of bamboos up to 25 for each family every year; 100 bamboos every fourth year on free passes. In so far as Vankal Range is concerned it is provided

that a royalty of Rs. 12 payable in 4 quarterly installments should be charged per family of bamboo workers for removing bamboos by head-loads. Article 90 which refers to the special privileges for Surat District provides for the free grant of hutting timber and bamboos worth Rs. 50/- for building new houses, a free grant of hutting timber and bamboos worth Rs. 25/- for repairing huts and for agricultural implements a year to the local forest villagers of Mangrol, Songadh and Vyara talukas of former Baroda State. These privileges have been extended to all forest villages in Songadh Taluka except Songadh proper, as well as to villages of Nanchal portion previously known as Umarpada Pala Mahal in Mangrol Taluka of Rajpipla Division. Local bamboo workers are permitted to remove by head-loads bamboos for the whole year on payment of fees of Rs. 12/- per annum.

4. Reference may now be made to certain Government Resolutions to which our attention was drawn by the learned advocate for the petitioners. These resolutions have been produced collectively at Annexure-A to petition No. 6252 of 1983. The first resolution is of 30th April, 1970 which *inter alia* provides that the question of supplying bamboos to the kotwalias at concessional rates for preparation of baskets etc., was under the consideration of the Government since quite some time. It further states that after careful consideration the Government was pleased to direct that the Kotwalias may be supplied bamboos at the rate of Rs. 7/- per 100 bamboos to the maximum of 800 bamboos per family per year, subject to the condition that the exploitation of the bamboos will be done by the Kotwalias themselves under supervision of the Forest Department. It further states that the existing concessions available to Kotwalias of old Baroda State at the rate of Rs. 12/- per annum for any number of bamboos as head-loads required for their *bona fide* use shall however continue. It becomes clear from the first part of the resolution that the Kotwalias were to be supplied bamboos not exceeding 800 in number per family per year at the rate of Rs. 7/- per 100 bamboos. It further stipulates that the concession available to the Kotwalias under the old Baroda State for grant of bamboos removed as head-loads for their *bona fide* use on payment of Rs. 12/- per annum would continue. Thereafter, by a resolution dt. 28th Oct., 1971 the benefit of the concessions granted under the resolution of 30th Apr., 1970 came to be extended to Vansfodias. Under the said resolution, Vansfodias became entitled to the supply of bamboos at the rate of Rs. 7/- per hundred subject to a maximum of 800 bamboos per family per year for preparation of baskets, etc., provided the exploitation was done by the Vansfodias themselves under the supervision of the Forest Department. These two resolutions, therefore, show that Kotwalias and Vansfodias were permitted to exploit bamboos for the purpose of preparing baskets, etc., at the rate of Rs. 7/- per 100 subject to a maximum of 800 bamboos per family per year. By a subsequent resolution of 28th Dec., 1971 the resolution of 30th April, 1970 came to be modified, presumably because the demand for bamboos had increased considerably, and that created difficulties so far as supervision by the Forest Officers was concerned. With a view to curbing indiscriminate exploitation of bamboos even by the Adivasis and Kotwalias it was directed that the bamboos should be cut departmentally rather than by the Adivasis, Kotwalias, etc., and they should be made available to the latter at Rs. 7/- per hundred bamboos plus the estimated cost of exploitation. In effect instead of the existing price of

Rs. 7/- per 100 bamboos prescribed under the resolution of 30th April, 1970, the charge was increased to Rs. 7/- per 100 bamboos plus the estimated cost of exploitation to be done departmentally. These orders were further modified by a resolution dt. 4th Mar., 1972 because it was felt that it was not possible to check whether or not the bamboos allotted to Kotwalias and Vansfodias for preparing baskets, etc., were in fact used for making bamboo articles. By this subsequent resolution it was directed that the Kotwalias and Vansfodias staying in the forest villages should be given bamboos at the rate of Rs. 22/- per 100 bamboos (Rs. 7/- for the bamboos and Rs. 15/- towards cost of exploitation etc.) subject to a maximum of 800 bamboos per family per year. In so far as Kotwalias and Vansfodias staying outside the forest villages were concerned it was directed that they may be supplied bamboos if they fulfilled the following conditions

- (i) They should be actually engaged in manufacturing of bamboo articles;
- (ii) they must be members of industrial cooperative societies;
- (iii) the bamboos shall be given to the industrial co-operative societies which will distribute them to their members who are Kotwalias/Vansfodias engaged in manufacturing of bamboo articles;
- (iv) the bamboo will be supplied to such societies subject to availability;
- (v) the quantity of bamboos supplied to such societies shall be limited to 200 bamboos per Kotwalias/Vansfodias member actually engaged in the manufacturing of bamboo articles;
- (vi) the bamboo will be supplied at a rate of Rs. 27/- per 100 bamboos (Rs. 12/- for bamboos and Rs. 15/- as the cost of exploitation); and
- (vii) if the quantity of bamboos available for supply to such societies is less than the demand of such societies, the bamboos shall be supplied according to the following priority
 - (a) societies in the District in which bamboos are available;
 - (b) societies in the District adjoining to these Districts in which bamboos are available; and
 - (c) societies in other districts.

It was further provided that the bamboos will be supplied ex-depot and the Kotwalias/Vansfodias who desire to work as labourers at the time of exploitation of bamboos may be engaged for that purpose by the Forest Department. In view of this Government Resolution the Kotwawas/Vansfodias residing in forest villages were to be supplied bamboos at the concessional rate of Rs. 22/- per 100 bamboos subject to a maximum of 800 bamboos per family per year, whereas their brethren residing outside the forest villages were ordered to be supplied bamboos at the higher rate of Rs. 27/- per 100 bamboos subject to a limit of 200 bamboos per member provided the other conditions set out earlier were fulfilled. From the above Government Resolutions also it becomes abundantly clear that Kotwalias and Vansfodias living within and without the forest villages were granted the privilege of receiving bamboos at the rates fixed by the Government for the purpose of preparing bamboo articles, such as, toplas, palas, supdas, etc.,

March 18,1986.

5. The grievance of the petitioners, however, is that despite these Government orders which confer certain privileges on the Adivasis - Kotwalias and Vansfodias residing in forest areas the officers of the Forest Department do not permit them to remove bamboos from the reserved forest areas in conformity with the said orders. According to the petitioners they are entitled to receive bamboos at the prescribed concessional rates for the purpose of making bamboo articles, such as, supdas, palas and toplas. It is the case of the petitioners that they prepare the aforesaid articles from bamboo chips and sell them in the market to earn their livelihood. Since the officers of the Forest Department have of late obstructed the removal of bamboos by the Adivasis Kotwalias and Vansfodias - living in the reserved forest areas they have been deprived of their meagre income which they received or earned for their livelihood and are facing extreme economic hardship. The petitioners of special civil application No. 6252 of 1983 have further averred that the Range Forest Officer of Jhagadia Range had raided the hutments of the Adivasis and members of the Bhil community and had carried away the bamboo chips without making any panchnama whatsoever some time before the institution of the petition. They have further averred that thereafter no prosecution has been launched against the petitioners nor have the petitioners been served with any show-cause notice to enable them to meet with the allegation which prompted the raid and the removal of the bamboo chips from their hutments. As far as the petitioners of special civil application No. 6275 of 1983 are concerned they have averred that the officers of the Forest Department are forcing the petitioners to enter into a scheme whereunder the right to remove bamboos from the forest area would be settled in favour of the privately owned Central Pulp Mills, Songadh, at the cost of the petitioners who would be deprived of their privilege to remove the bamboos from the forest area as per the aforementioned Government orders. They have averred that in order that the petitioners and similarly placed Adivasis may be forced to enter into such an arrangement with the Central Pulp Mills, Songadh, the officers of the Forest Department have wrongly placed obstacles with a view to depriving the petitioners of their privilege and livelihood. According to the petitioners because of the quota of bamboo settled in favour of the Central Pulp Mills, the petitioners are denied their legitimate right of receiving bamboos under the aforesaid Government orders and instead they are permitted to remove only 20 bamboos per week per family which quota is grossly inadequate to even meet with their domestic requirements. Similar allegations are to be found in special civil application No. 1932 of 1982 also. In short the petitioners of the aforesaid three petitions complain that even though certain privileges have been conferred upon the local inhabitants of the reserved forests in regard to the exploitation of bamboos from the forests and Government orders have been issued from time to time in that connection, the officers of the Forest Department have created a situation which makes it impossible for the petitioners and the members of their community to avail of the bamboos required for earning a meagre livelihood. Annexure-A to the petition No. 6252 of 1983 has been produced with a view to pointing out that the Forest officials, had gone to the length of requesting the Railway Administration not to book bamboo articles prepared by these Adivasis even though there was no statutory rule or order banning the carriage of the said articles by rail.

The Under Secretary to the Government of Gujarat, Forests and Co-operation Department, has in the said communication, Annexure-A, stated as under

"When there is no statutory restrictions on the movement of the bamboos, palas, toplas and firewood, it is too much to ask the Railway authorities not to book such products."

This document has been produced for the limited purpose of showing that the officers of the Forest Department have gone to the length of forcing the Railway authorities not to book the bamboo-articles prepared by these poor Adivasis under the guise of curbing illicit cutting of bamboos etc., in collusion with certain vested interests.

6. In the counter-affidavit filed on behalf of the Forest Department it is contended that the petitioners are not entitled to maintain the petition because they are not Kotwalias/ but in fact belong to the Vasava community, members whereof are agriculturists who earn their living from agricultural labour. It is contended that the petitioners have wrongly described themselves as Kotwalias/Vansfodias with a view to enjoying privilege of receiving bamboos at concessional rates from the forest areas and then disposing of the bamboo articles to private contractors. According to the deponent these private contractors encourage reckless cutting and hacking of bamboo to increase competition which would enable them to purchase the bamboo articles at throw- away prices. As a result, the demand for bamboos from Kotwalias and Vansfodias increased considerably over a period of time which made it difficult for the Forest officials to regulate and check the reckless cutting of bamboos. In the interest of the tribals and for the better and scientific management of the Forests, the State Government issued a Resolution dt. 4th Mar., 1972 providing *inter alia* that bamboos should be supplied to the Kotwalias ex-forest depots after they are departmentally extracted at the rate of Rs. 22/- per 100 bamboos, subject to a maximum of 800 bamboos per year per family of Kotwalias/Vansfodias residing in the forest area or village. Denying that the petitioners had any special privilege for removing bamboos at concessional rates it is further averred that a co-operative society by the name 'Natrang Vibhag Van Kamdar Audyogik Shakari Mandli' was registered of which some of the petitioners were founder-members with a view to regulating the supply of bamboos to the Adivasis residing in forest villages. It is contended that bamboos are supplied to this society as per Government orders and hence no permits or passes are issued to individual members of the Adivasis community. In view of the above, the respondents contend that certain restrictions had to be placed on the extraction of bamboo by the Adivasis residing in the forest areas with a view to regulating the supply of bamboos and checking reckless cutting of bamboo in the reserved forest area.

7. In the rejoinder-affidavit filed by one of the petitioners, the allegation that they are not Kotwalias and are not entitled to the special privileges set out in the Forest Manual and the Government Orders issued from time to time is denied and in support thereof certain certificates issued by the concerned Gram Panchayats have been produced on record; to show that they are

Kotwalias residing within the reserved forest areas. They have also produced copies of certain bills to show that the price they fetched on the sale of bamboo articles from private contractors was much more to make good their point that they received a far better price than that offered by the Forest Department.

8. On the first question whether the petitioners are Kotwalias entitled to the privileges set out earlier, a reference may be made to Article 75 of the Gujarat Forest Manual (Volume III) which lays down that "aboriginal or hill tribe" includes persons who are residents of forest tracts and who depend entirely on manual labour for their living and usually eke out their subsistence by labour in the forest and by the collection and sale or barter of forest produce. Thereafter the classes of residents falling within this category have been catalogued. At serial No. 4 there is reference to Bhils, at serial No. 25 to Tadvi Bhils and at serial No. 29 to Vasavas. It would therefore, appear from the said Article that even members belonging to Vasava community fall within the expression 'aboriginal or hill tribe' who are residents of forest tracts and who eke out their subsistence by manual labour. In the counter-affidavit filed by S.R. Rohi, Assistant Conservator of Forests, Rajpipla (West), it is conceded that the petitioners belong to the Vasava community. The petitioners of these petitions are Adivasis or Bhils known as Kotwalias or Vansfodias who reside in forest tracts and depend entirely on manual labour for their existence. It is clear from the averments made in the three petitions that these petitioners eke out their subsistence by making topas palas, supdas etc., from bamboo chips. It is, therefore, obvious that if they are not Permitted to remove bamboos as per the privileges conferred upon them under the Forest Manual as well as Government orders issued from time to time in this behalf, they would starve. Except the statement in the counter-affidavit that the petitioners belong to the Vasava community and are agriculturists and earn their living from agricultural labour, no other material has been placed on record to support the averment. On the other hand the certificates issued by the concerned Gram Panchayat collectively produced at Annexure-I to the affidavit-in-rejoinder clearly show that the petitioners are Adivasis and belong to the backward Hindu Bhil community who eke out their subsistence by making bamboo articles, such as, palas, topas, supdas, etc., since generations. Even the two certificates issued by the Secretary of Netrang Vibhag Vana Kamdar Jangal Audhyogik Sahakari Mandli, Limited, prove the fact that the petitioners are poor Adivasis. Some of the petitioners are the founder members of this Society and many others are willing to participate in this co-operative effort but the society is not in a position to admit them as members as the bamboos supplied to the Society are not sufficient to meet with the requirements of existing members. The certificates clearly show that for want of adequate supply of bamboos the members are actually starving. The copies of the bills Produced at Annexure-III to the affidavit-in-rejoinder also support their contention that they prepare bamboo articles and sell the same to the contractors to make their living. On consideration of the aforesaid oral as well as documentary evidence there is no escape from the conclusion that the petitioners of the three petitions are members of the Bhil or Vasava communities entitled to certain privileges referred to earlier.

9. We have already set out in the earlier part of this judgment the relevant articles from the Forest Manual to show that certain special privileges have been conferred on the members of these tribes residing in the reserved forest areas insofar as the grant of bamboos is concerned. The four Government resolutions referred to earlier also go to show that the members of these tribes are entitled to receive bamboos of a certain quantity at concessional rates to prepare bamboo articles for sale to eke out their existence. Under the Government Resolutions of 30th April, 1970 and 28th Oct., 1971 Kotwalias and Vansfodias were entitled to bamboos not exceeding 800 in number per family per year at the rate of Rs. 7/- per 100 bamboos for preparation of bamboo articles subject to the condition that the exploitation of bamboos would have to be done by them under strict supervision of the Forest Department. Kotwalias of old Baroda State were entitled to bamboos on payment of Rs. 12/- per annum carried as head-loads for *bona fide* use without any limit whatsoever. By the subsequent resolution of 28th Dec. 1971, with a view to curb reckless cutting of bamboos and to regulate the supply of bamboos the Government Resolution of 30th April, 1970 was modified to the effect that bamboos should be cut departmentally instead, of by the Adivasis/Kotwalias etc., and they should be supplied to the latter at Rs. 7/- per 100 plus estimated cost of exploitation etc., instead of the prescribed price of Rs. 7/- per 100 bamboos. In other words the revised price was higher as the estimated cost of exploitation was sought to be recovered from the Adivasis. By a further resolution of 4th Mar., 1972 the said resolution was further modified by providing that Kotwalias/Vansfodias residing in the forest areas should be supplied bamboos at the rate of Rs. 22/- per 100 bamboos subject to a maximum of 800 bamboos per family, per year. Kotwalias/Vansfodias residing outside the forest villages were, however, to be supplied bamboos on certain conditions laid down by the said resolution which included the requirement to form an industrial cooperative society through which distribution of bamboos for manufacturing bamboo articles could be regulated. It was further provided that such Kotwalias/Vansfodias residing outside the forest villages should be supplied 200 bamboos per member of the family actually engaged in the manufacture of bamboo articles at the price of Rs. 27/- per 100 bamboos. It becomes crystal clear from the aforesaid resolutions that Kotwalias/Vansfodias residing in forest villages are entitled to bamboos at the rate of Rs. 22/- per 100 bamboos, subject to a maximum of 800 bamboos per family per year. Since the petitioners of the present writ petitions are residents of forests areas they would be entitled to bamboos at the above rate subject to a maximum of 800 bamboos per family per year. It is only in respect of Kotwalias/Vansfodias staying outside the forest villages that the need to establish a cooperative society for regulating the distribution of bamboos to the members thereof was considered necessary. We are, therefore, of the opinion that the petitioners who reside in forest villages are entitled to bamboo at the rate of Rs. 22/- per 100 bamboos subject to a maximum of 800 bamboos per family per year.

10. The purpose and object of granting certain special privileges and the issuance of the Government orders in that behalf referred to earlier is to provide to the residents of forest villages a source of livelihood. These Adivasis - Kotwalias and Vansfodias - who reside in forest areas are solely dependent on forest produce and if they are deprived of the same their source of livelihood

would be totally cut. Realizing the same the Government has issued certain orders from time to time to ensure the supply of bamboos to these residents to enable them to prepare certain articles from bamboo chips which could be sold in the open market to earn a living. It is clearly established from the averments in the affidavits as well as certain documents produced on record that the petitioners prepare bamboo articles from bamboo chips and sell them to private contractors at an agreed price. These private contractors may be entering into contracts with outstation merchants. They were transporting these bamboo articles purchased from the Adivasis to different stations by rail, but as pointed out earlier an attempt was made by the officers of the Forest Department to block the transport of the said articles by rail. Fortunately, the Under Secretary in the Forest Department took the view that there being no statutory restriction on the movement of such articles the Railway administration could not be asked to refuse to book such products. Since it is provided by the Government orders that exploitation of bamboos will be carried out departmentally and thereafter the same will be supplied to Kotwalias/Vansfodias at Rs. 22/- per 100 bamboos subject to a maximum of 800 bamboos per family per year the apprehension of reckless exploitation of bamboos is taken care of. The bamboo articles prepared from bamboo chips supplied to Kotwalias/Vansfodias at the stipulated price are sold to contractors at a price agreed upon between them. Copies of bills of sales, collectively produced at Annexure-III to the affidavit-in-rejoinder show that the price fetched from contractors was higher than that paid by the co-operative society. Under the Government Resolution of 4th Mar., 1972, the requirement of formation of a co-operative society for the distribution of bamboos applies to Kotwalias and Vansfodias residing outside the forest villages. Since the petitioners of these three petitions are residents of forest villages, the insistence on the fulfilment of the conditions set out in sub-para. (I) to (vii) of para (2) of the said Government Resolution of 4th Mar., 1972 would not be justified. We have already pointed out earlier that by virtue of Article 75(3) of the Forest Manual, Volume III, these privileges have to be enjoyed without permit or special permission from Forest Officers. Although these are privileges and not rights, vide Article 75(2), and can be modified, curtailed or discontinued at the pleasure of the Government, so long as the Government resolution of 4th Mar., 1972 stands, the officers of the Forest Department are bound to act in conformity therewith they cannot be permitted to commit an infraction thereof. In our view, therefore, the petitioners of the three writ petitions who reside in forest villages are entitled to insist on the compliance with the first paragraph of the resolution of 4th Mar., 1972.

11. We now deal with the Letters Patent Appeal No. 21 of 1981 arising out of Special Civil Application No. 1412 of 1981 filed by a dealer in furniture and other articles, such as, supdas, palas, topas, etc., carrying on business in Mangrol Taluka. According to him he buys bamboo articles from Kotwalias and Vansfodias residing in forest areas and transports them through his truck outside the forest areas for sale. His grievance was that the Forest Officers do not permit him to carry the bamboo articles in his truck outside the forest areas without a necessary permit. According to him in law he is not required to take out a permit since bamboo articles do not fall within the meaning of forest produce and can, therefore, be transported outside the forest area

without pass or permit. Since the officers of the Forest Department were insisting on the production of a pass or a permit for carriage of these bamboo articles outside the forest area and since on his failure to produce the same they were threatening to prosecute him and to confiscate his articles, vehicle, etc he filed the aforesaid petition for a mandamus to restrain the forest officers, their agents and servants from preventing him from transporting the said bamboo articles outside the forest areas. This petition was summarily dismissed by P.D. Desai, J. on 24th July, 1981. According to the learned single Judge the expression 'forest produce' included trees and leaves, flowers and fruits and all other parts or produce of trees which include bamboos and, therefore, any produce of bamboos would be comprehended with the expression "forest produce" and hence removal of such forest produce without pass or permit would amount to an offence under Section 26 of the Act. Any attempt to remove such articles without pass or permit could be blocked by virtue of Section 52 of the Act. On this line of reasoning the learned single Judge summarily dismissed the petition and it is against that order that the present appeal is filed.

12. We have already pointed out earlier that under the Government Resolution of 4th Mar., 1972 Kotwalias and Vansfodias residing in forest villages are entitled to bamboos at the rate of Rs. 22/- per hundred, subject to a maximum of 800 bamboos per family per year. The obvious purpose of granting this privilege is to ensure that these poor Adivasis living in forest villages receive the necessary raw material for the manufacture of bamboo articles to eke out their existence. The bamboo articles prepared by them from bamboo chips have to be sold to dealers of such articles.

13. Now, under Section 52 of the Act, as it then stood, a Forest Officer or a Police Officer, having reason to believe that a forest-offence has been committed in respect of any forest produce, may seize such produce together with the vehicle used for committing such offence. 'Forest-offence' as defined in Section 2(3) means an offence punishable under the Act or under any rule made thereunder. Section 26 outlines the acts prohibited in reserved forests and makes the same punishable with imprisonment or fine or both. Under that Section any person who *inter alia* trespasses or subjects to any manufacturing process or removes any forest produce commits an offence and becomes liable to punishment as above. Sub-section(2) of Section 26 provides that nothing in Sub-section(1) shall be deemed to prohibit (a) any act done by permission in writing of the Forest Officer, or under any rule made by the State Government, or (b) the exercise of any right continued under Clause (c) of Sub-section(2) of Section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23. It is, therefore, obvious that if any act is done by permission in writing of the Forest Officer or under any rule made by the State Government, it shall not be an offence under Section 26(1) of the Act. Section 41 vests in the State Government the control of all timber and other forest-produce in transit and provides for making of rules to regulate the transit of all forest- produce. The rules may *inter alia* prescribe the routes by which the forest-produce may be moved into, from or within the State, prohibit the import, export or movement of forest-produce without a pass from an authorized officer and provide for the issue, production and return of such passes. Rule 66 of the Bombay Forest Rules, 1942, duly adopted by the State of Gujarat lays down that no forest-produce shall

be moved into, or from or within any district without a pass from a duly authorized officer. Now the expression 'forest-produce' as defined by Section 2(4) of the Act includes trees and leaves, flowers and fruits and all other parts or produce of trees. Section 2(7) which defines 'tree' includes a bamboo. Therefore, bamboos are undoubtedly forest-produce. Toplas, palas and Supdas are undoubtedly prepared from bamboo chips and can be described as bamboo-articles, but do such articles fall within the definition of 'forest produce' A careful look at the various clauses of the definition of forest-produce makes it clear that it takes within its fold all that is produced by nature but does not include man-made products such as toplas, palas, supdas, etc., made from bamboo chips. True it is that if bamboo as a whole is forest-produce, every part thereof including chips would fall within that definition but once the chips cease to be a 'produce' of nature and get merged into a 'product' brought about by human labor and if the product so made is commercially new and distinct, known to the business community as a totally different commodity having a distinct character, such an article or product ceases to be a forest-produce, i.e., furniture made from timber or paper produced from bamboo-pulp. Therefore, bamboo being a tree would certainly fall within Clause (b) of the definition of 'forest-produce', but toplas, supdas and palas made out of bamboo chips would not fall within the definition of forest-produce. Section 26(1)(g) makes a person who subjects to any manufacturing process or removes any forest-produce liable to penalty prescribed thereunder but the said provision is subject to the exemption provided by Sub-section(2) thereof. In the first place it must be conceded that even if making of toplas, palas, supdas, etc., is considered subjecting forest-produce (bamboo chips) to a manufacturing process, such a process is undertaken by Kotwalias and Vansfodias and not the dealers who purchase such articles from the formers. Kotwalias and Vansfodias are provided bamboos specifically to enable them to make a living from bamboo articles. This is obvious from the Government resolutions including the last resolution of 4th Mar., 1972. Since they are specifically permitted to make bamboo articles; from the bamboos supplied to them, they would be covered by the exception clause in Section 26(2) of the Act. Since bamboo articles produced from bamboo-chips do not fall within the definition of 'forest-produce', the appellant could not be said to be removing forest-produce within the meaning of Section 26(1)(g) of the Act. We are, therefore, of the view that the appellant was not removing forest-produce when he transported supdas, palas and toplas (bamboo-articles) out of forest area after purchasing them from the Adivasis residing in the forest. We are, therefore, inclined to think that the learned single Judge was wrong in holding that the appellant was removing 'forest produce' which was not permissible unless it was done with the express permission of the Forest Officer or under any rule made by the State Government in that behalf. In that view that we take, the letters patent appeal must be allowed.

14. In the result the Writ Petitions Nos. 1932 of 1982, 6252 of 1983 and 6275 of 1983 are allowed and the rule is made absolute to the following effect

- (i) the petitioners shall be supplied bamboos in accordance with para(1) of the Government Resolution No. MFP-1070-97849P dt 4th Mar., 1972 at the rate of Rs. 22/- per 100 bamboos subject to a maximum of 800 bamboos per family per year, till the rate

is revised by the State Government under appropriate orders;

(ii) the petitioners will also be permitted to sell their bamboo articles such as supdas, palas, toplas, etc., to dealers in bamboo articles of their choice at such price or prices as may be agreed upon by and between them; and

(iii) the petitioners and purchasers will be allowed to remove the bamboo articles so purchased from the forest areas to non-forest areas without treating them as 'forest produce' within the meaning of Section 2(4) of the Act.

We may make it clear that we do not express any opinion on the question whether any private dealer or purchaser is required to obtain permission of the Forest Officers for entry of his vehicle into the forest area for the purpose of transporting the bamboo articles purchased from the petitioners since no action was taken against the appellant on that count.

15. Letters Patent Appeal No. 211 of 1981 is allowed and the order passed by the learned single Judge dt. 24th July, 1981 is set aside and a writ of mandamus is directed to issue against the officers of the Forest Department to the effect that they will not treat articles prepared from bamboos as 'forest-produce' and interfere with the transit thereof as such from the forest area to the non-forest area.

16. There would be no order as to costs in the writ petitions as well as the letters patent appeal. Order accordingly.