STATE OF TRIPURA AND ORS. A

v.

SUDHIR RANJAN NATH

FEBRUARY 13, 1997

[B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.] B

Indian Forest Act, 1927 : Sections 41 and 76(d).

Tripura Transit Rules—Rule 3(8)—Timber and firewood—Quantity to be exported from State—To be determined on basis of availability of forest produce after catering to needs and requirements of local people of State—Validity of—Held : Rule 3(8) fell within the power of State Government under S. 41 of the Act "to regulate transit of timber and other forest produce"—Power to "regulate" includes power to prohibit in the context of sub-rule (8)—Further, sub-rule (8) was not only relatable to S. 41 but also to S. 76(d) inasmuch as it was intended to carry out the object and purposes of the Act—Hence, R. 3(8) was valid and intra-vires the Act—Tripura Transit Rules, R. 3. C D

Sections 41 and 76(d)—Tripura Transit Rule—Rule 3—State Government imposed restrictions regulating transit of timber and other forest produce—Held : Rule 3 neither violative nor required to comply with proviso to Art. 304(b)—It is saved by Art. 302—Rule was made by the State as delegate of Parliament to carry out purposes of the Act—It was neither a law made by the State Legislature nor a rule made by the State Government in its capacity as Government of Tripura—Hence, Rule 3 not required to comply with Art. 304(b). E F

Sections 41 and 76—Tripura Transit Rules—Rule 3—Forest Act, insofar as Tripura State was concerned, being post-Constitutional Parliamentary enactment (as it had been extended to Tripura, which was then a Union Territory) by Union Territory (Laws) Act, 1950, Ss. 41 and 76 thereof were laws within the meaning of Art. 302—Ss. 41 and 76 thus being saved by Art. 302, any Rule made to carry out the purposes of the said provisions or to elucidate the meaning and purpose of the said provisions must equally be protected by Art. 302. G

Section 39—Tripura Transit Rules—Rule 3—Held : The expression H

A *"restrictions" in Art. 302 was not qualified by word "reasonable"—But even proceeding for the present purposes that the restrictions ought to be reasonable since Art. 302 has a close parallel with Clauses (2) to (6) of Art. 19, the power to impose reasonable restrictions took the power to prohibit also in appropriate situations—Hence, considering that the restrictions imposed by R. 3*
B *amounted to prohibition, it is unconstitutional—However, R. 3 could not have been sustained by sub-sections (3) and (4) of S.39—Constitution of India, 1950, Arts. 301 to 304.*

Sections 39, 41 and 76—Tripura Transit Rules—Rule 3(5)—Empowered State Government to levy duty for export of timber and firewood upto 100%
C *of their market value—Held : Rule 3(5) ultra vires S.41 of Forest Act.*

Sections 41 and 76(d)—Tripura Transit Rules 3(3) and (4)—Forest produce—Movement of—Licence levy of—Application fee and licence fee of Rs. 1,000 and Rs. 2,000 respectively—Held : Such fee was regulatory fee and not compensatory fee for which no quid pro quo need be established—Hence,
D *Rules 3(3) and (4) valid—Constitution of India, 1950, Art. 301.*

Sections 41 and 76(d)—Tripura Transit Rules—Rule 3(2)—Provided for licence for removal of timber or firewood from within the State to any place outside the State and also for establishing a trading depot within the
E *State—Held : Rule 3(2) was covered by Ss. 41 and 76(d)—Hence, Rules 3(3) and (4) valid.*

The Indian Forest Act, 1927 was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on
F **timber and other forest-produce. The Act was extended to the then Union Territory of Tripura by the Union Territories (Laws) Act, 1950. It continued to be applicable to the State of Tripura. The State Government framed the Tripura Transit Rules under Sections 41 and 42 of the Act. Rule 3 of the Transit Rules provided for levy of an application fee and licence fee of Rs. 1,000 and Rs. 2,000 respectively for movement of forest-**
G **produce. The Rule also provided that no person was permitted to establish a trading depot within the State without a licence. Rule 3(5) of the Rules levied export duty extending upto hundred percent of the market value of timber/firewood.**

H **The High Court had declared that the levy of application and licence**

fees amounted to levy of tax and was bad. This was on the ground that the State had not established the service rendered in lieu of the said fees. The High Court had also held that Rule 3(5) of the Transit Rules, which levied export duty on export of timber from the State, was beyond the rule-making power conferred upon the State Government by Section 41 of the Act. The High Court had also found fault with Rule 3(8). The High Court further held that Rule 3 violated Article 301 of the Constitution and since the proviso to clause (b) of Article 304 has not been complied with, the Rule was declared illegal and *ultra vires* the Constitution.

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On behalf of the respondent it was contended that the power to regulate conferred by Section 41 of the Act did not empower the State Government to prohibit the export of forest- produce from within the State to a place outside the State as provided by Rule 3(8); and that the power to regulate did not include the power to prohibit.

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Allowing the appeal, this Court

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HELD : 1.1. Rule 3 of the Transit Rules as framed by the State Government is not only relatable to Section 41 of the Indian Forest Act, 1927 but also to clause (d) of Section 76 of the Act. Rule 3(8) empowers the State Government to prohibit the export of timber and firewood if such a course is necessary to cater to the needs of the local people or for meeting the requirements of the people of the State. Thus power to "regulate" includes power to prohibit in the context of sub-rule (8). Clause (d) of Section 76 empowers the State Government to make rules generally to carry out the provisions of the Act, which means the carrying out the object and purposes of the Act. The object of the Act is to preserve and protect the forest wealth of the country of and to regulate the cutting, removal, transport and possession of the forest-produce in the interest of the State and their people. It is for achieving the above purpose that the Act provides for declaration of reserve forest, formation of village forests and declaration of protected forest. It is for achieving the very purpose that the Act vests, in the Government, control over forest and lands not being the property of the Government and controls even the collection and movement of drift and stranded timber. It is not a taxing enactment designed to preserve, protect and promote the forest wealth in the interests of the nation. It must necessarily take within its fold catering to the needs of the

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A **people of the State and that is what sub-rule (8) provides. Therefore, Rule 3(8) is perfectly valid. [47-C-E]**

Jiyajee Cotton Mills Ltd. & Anr. **v.** *M.P. Electricity Board & Anr.,* **[1989] Suppl. 2 SCC 52;** *K. Ramanathan* **v.** *State of Tamil Nadu & Anr.,* **[1985] 2 SCC 116;** *State of Tamil Nadu* **v.** *M/s. Hind Stone & Ors.,* **[1981] 2 SCC 205** B **and** *State of U.P.* **v.** *Hindustan Aluminium Corporation,* **[1979] 3 SCC 229, relied on.**

State of Mysore **v.** *H. Sanjeeviah,* **[1967] 2 SCR 361, held in applicable.**

C *G.K. Krishnan* **v.** *State of T.N.,* **[1975] 1 SCC 375 and** *Commonwealth of Australia* **v.** *Bank of New South Wales,* **(1950) AC 235, cited.**

1.2. The impugned Rule 3 of the Transit Rules is made by the State as the delegate of the Parliament to carry out the purposes of the Act. It is not a law made by the legislature of the State nor is it a rule made by D **the State Government in its capacity as the Government of Tripura. The Indian Forest Act is a post-constitutional Parliamentary enactment insofar as Tripura is concerned for the reason that it has been extended to Tripura (which was then a Union Territory) by the Union Territories (Laws) Act, 1950. Sections 41 and 76 are, therefore, laws within the** E **meaning of Article 302 of the Constitution. If Sections 41 and 76 are saved by Article 302, any rule made to carry out the purposes of the said provisions or to elucidate the meaning and purport of the said provisions must equally be protected by Article 302. The expression "restrictions" is not qualified by the word "reasonable". Even proceeding for the present** F **purposes that the restrictions ought to be reasonable, since Article 302 has a close parallel with clauses (2) to (6) of Article 19, the power to impose reasonable restrictions takes in the power to prohibit also in appropriate situations. Hence, Rule 3 of the Tripura Transit Rules cannot be said to be violative of Article 301 is it required to comply with the requirement of** G **the proviso to clause (b) of Article 304 of the Constitution. However, Rule 3 could not also have been sustained by sub-sections (3) and (4) of Section 39 of the Act. Rule 3 of the Tripura Transit Rules, except sub-rule (5) thereof, is declared to be perfectly valid and effective. [47-G-H, 48-A-E]**

State of Mysore **v.** *H. Sanjeeviah,* **[1967] 2 SCR 361;** *M/s. Krishan Lal* H *Praveen Kumar* **v.** *State of Rajasthan,* **[1981] 4 SCC 550 and** *Narendra*

Kumar v. *Union of India,* [1960] 2 SCR 361, relied on. A

Mithan Lal v. *The State of Delhi & Anr.,* [1959] SCR 445 and *New Delhi Municipal Committee* v. *State of Punjab,* [1997] 1 JT SC 40, referred to.

2. There is nothing in Section 41, which empowers the State Government to levy export duty. The power to levy duty is conferred only upon the Central Government by Section 39 and that power is neither delegated to the State Government nor is the State Government empowered to make rule with respect to the said levy. Neither the powers conferred upon the State Government by Section 41 nor the power conferred by Section 76 comprehend the levy of export duty. The power to levy duty is conferred only upon one named authority, viz., the Central Government. It must accordingly be held that sub-rule (5) has been rightly declared bad. [42-E-F] B C

3. The High Court was not right in holding that the application fee and licence fee of Rs. 1,000 and Rs. 2,000 respectively amounted to tax on the ground that it has not been proved to be compensatory in nature. The said fee imposed by sub- rule (3) and (4) of Rule 3 is a fee within the meaning of Section 41(2). It is regulatory fee and not compensatory fee for which no *quid pro quo* need be established. [42-G-H] D

Corporation of Calcutta v. *Liberty Cinema,* [1965] 2 SCR 477; *Van Organic Chemical Industries* v. *Collector of Central Excise, Bombay,* (1997) 1 JT SC 641 and *Bihar Distillery & Anr.* v. *Union of India,* (1997) 2 JT SC 20, relied on. E

Shannon v. *Lower Mainland Dairy Products Board,* (1938) AC 708, cited. F

4. Rule 3(2) merely provides for a licence for removal of timber or firewood from within the State to any place outside the State and also for setting up or establishing a trading depot within the State. This sub-rule is equally within the four corners of Section 41. Indeed Section 41(d) which empowers the State Government to make rules generally to carry out the provisions of this Act also serves as an authority for the said sub-rule. [44-A-B] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 772 of H

A 1997.

From the Judgement and Order 11.10.91 of the Gauhati High Court (Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) in C.R. No. 184 of 1990.

B S.S. Javali and Gopal Singh for the Appellants.

Har Dev Singh and Ms. Madhu Moolchandani for the Respondent.

The Judgment of the Court was delivered by

C **B.P. JEEVAN REDDY, J.** Leave granted. Heard the counsel for the parties.

The Gauhati High Court has declared Rule 3 of the Transit Rules framed by the Government of Tripura under Sections 41 and 42 of the Indian Forest Act, 1927 as illegal and *ultravires* the Constitution. The D correctness of the said decisions is challenged by the State of Tripura.

The Indian Forest Act, 1927 (the Act) was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. The Act was extended to the E then Union Territory of Tripura by the Union Territories (Laws) Act, 1950 (Act 30 of 1950). It continues to be applicable to the State of Tripura. The Indian Forest Act is thus a post-constitutional enactment, so far as Tripura is concerned, *vide Mithan Lal* v. *The State of Delhi & Anr.,* [1959] SCR 445 and *New Delhi Municipal Committee* v. *State of Punjab Etc. Etc.,* (1997) 1 F J.T. S.C. 40.

Chapter II of the Act deals with reserved forests while Chapter III deals with village forests. Chapter IV deals with protected forests and while Chapter V with State government Control over forests and lands not being the property of the government. Chapter VI provides for levy of duty on G timber and other forest-produce. Chapter VII provides for control on timber and other forest-produce in transit. Chapter VIII deals with drift timber. Chapters IX, XI and XIII contain machinery provisions. A perusal of the provisions of the Act shows that the Act is designed to protect and increase the forest wealth and its proper utilisation for the purposes of the H State and the people. For the purpose of the present case, it is not

necessary to notice the provisions of the several chapters of the Act except Chapter VI, VII and XII. Section 39 in Chapter VI confers upon the Central Government the power to levy duty on timber and other forest-produce. Section 39 reads as follows :

> "*39. Power to impose duty on timber and other forest- produce*-(1) The Central Government may levy and duty in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest-produce-
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> (a) which is produced in the territories to which this Act extends, and in respect of which the Government has any right;
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> (b) which is brought from any place outside the territories to which this Act extends.
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> (2) In every case in which such duty is directed to be levied *ad valorem* the Central Government may fix by like notification the value on which such duty shall be assessed.
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> (3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.
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> (4) Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by Parliament, continue to levy any duty which it was lawfully levying before the commencement of the Constitution, under this section as then in force;
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> Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the State and similar produce of the locality outside the state, discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the State, discriminates between timber or other forest-produce of one locality and similar timber or other forest- produce of another locality."

Sub-section (1) thus confers the power to levy duty only upon the

A Central government and not upon the State Governments. Sub-section (3), however, says that if any duty levied under the authority of the State government on timber or other forest-produce is in force in any territory on the date of coming into force of the said Act, the same shall be deemed to be and to have been levied under the said section. Sub-section (4) says that until a provision is made to the contrary by parliament, the State B government may "continue to levy any duty which *it* was lawfully levying before the commencement of the Constitution, under this section as then in force". These sub-section are referred to for the reason that an argument is built upon them by the appellant-State, which we shall refer to at a later stage.

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Section 41 vests in the State government control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest-produce in transit by land or water. It also empowers the State government to make rules "to regulate the transit of all timber and other forest-produce". Sub-section (2) elucidates several matters in respect D of which rules can be framed. It would be appropriate to set out Section 41 in its entirety :

> *41. Power to make rules to regulate transit of forest produce.*– (1) The control of all rivers and their banks as regards the floating of E timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.
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> (2) In particular and without prejudice to the generality of the F foregoing power such rules may --
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> (a) Prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;
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> (b) 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;
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> H (c) provide for the issue, production and return of such passes and

for the payment of fees therefor;

(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;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying or marking hammers or other implements used for making timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other

A forest-produce or to any specified local area."

Chapter XII confers an additional power upon the State government to make rules. Sections 76, 77 and 78 occurring therein read as follows :

"*76. Additional powers to make rules.*– The State Government may
B make rules –

(a) to prescribe and limit the powers and duties of any Forest-officer under this Act;

(b) to regulate the rewards to be paid to officers and informers
C out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

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(d) generally, to carry out the provisions of this Act.

77. Penalties for breach of rules. – Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a
E term which may extend to one month, or fine which may extend to five hundred rupees, or both.

78. Rules when to have force of law. – All rules made by the State Government under this Act shall be published in the Official Gazette, and shall thereupon, so far as they are consistent with this
F Act, have effect as if enacted therein."

A reading of Section 41 and 76 discloses that besides vesting total control over the forest-produce in the State government and empowering it to regulate the transit of all timber or other forest-produce, the State
G government is also empowered to make rules "generally, to carry out the provisions of this Act". Thus, any rule made by the State government which purports to give effect to any of its provisions would be within the four corners of the Act.

In exercise of the powers conferred upon it by the Act, State govern-
H ment has framed the Transit Rules. Rule 3, with which alone we are

concerned, reads thus; A

"3(1). Any person importing, exporting or moving into, from or within, or who has imported, exported or moved into from or within the State of Tripura any forest produce, shall present it to the Forest Officer in Charge of the place of origin or entry of the forest produce, or to the Forest Officer in Charge of the area B nearest to the place of origin or entry of the same through which it is transported, for examination and check, and shall pay the amount, if any, due thereon & obtain a transit pass in Form C of the Appendix to these rules.

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(2) No person shall remove or cause to be removed from the State for the purpose of trade or otherwise any timber and firewood to any other place outside the State and no trading depot shall be set up or established in the State at any place without licence for such purpose from the Divisional Forest Officer having the jurisdiction over the area subject to approval of Conservator of Forests for the D Circles.

(3) Every application for grant of licence under the aforesaid Rule shall be made to the Divisional Forest Officer having the jurisdiction over the area in the Form appended to this Rules and on E payment of non-refundable application fee amounting to Rs. 1,000.

(4) Every order granting or refusing a licence under these Rules shall be in writing and in case of refusal, shall contain the reasons therefor. The licence fee of Rs. 2,000 shall be paid and deposited in Government Treasury/Sub-Treasury by challan and the F receipted copy of the challan must accompany the licence.

(5) A licensee shall be required to pay the export duty for export of timber and firewood from this State to other States which shall not exceed 100% of the market value of such timber/firewood as G will be assessed by the Divisional Forest Officer.

(6) The conditions of the licence, the route or routes through which the timbers/firewoods are to be transported to a place outside the State and the period of validity of the licence shall be such as may be notified by the State Government in the Official Gazette. H

Provided that the conditions of the licence and the period of its validity may vary for different categories of timber.

Provided further that such period of validity shall not exceed 6 (six) months.

(7) Every licence granted under this Rules may be renewed. An application for renewal of licence shall be made in form-E within 30 (thirty) days before the expiry of the licence. The Divisional Forest Officer Having the jurisdiction over the area shall on receipt of application for renewal of licence, make such inquiry as he may think fit and within a period of 60 (sixty) days from the date of receipt of such application, either grant or refuse to grant renewal of the licence;

Provided that no renewal of licence shall be granted unless the Divisional Forest Officer is satisfied about the location, availability of the raw materials, financial capacity, past records in business and relevant antecedent of such person. Whether the Divisional Forest Officer refuses to grant such renewal of licence, he shall record the reasons therefor and such reasons shall be communicated to the persons in writing. For the purpose of inquiry under this Rules, the Divisional Forest Officer may enter into or upon any land, survey and demarcate the same, make a map thereof or authorises any Officer to do so and also call for such documents as he deems necessary for ascertaining the merit of the application.

Provided further that no application for renewal of licence shall be rejected unless the holder of such licence has been given an opportunity of presenting his case and unless the Divisional Forest Officer is satisfied that the application for such renewal has been made after the period specified therefor of any statement made by the person making such application for grant of renewal of the licence was incorrect or materially false or such person has contravened any of the terms and conditions of the licence or any provision of the Indian Forest Act or the Rules made thereunder or such person does not fulfil the terms and conditions of such licence.

(8) The quantity of timber and firewood which will be permissible

for export by a export licensee shall be determined on the basis of availability of forest produce after catering to the needs of the local people of the State and those of the Forest trade licence holder for trading in forest produces within the State meeting the requirement of the people of the State."

[Sub-rules (2) to (8) were added by Notification dated May 7, 1990.]

Rule 3(1) obligates any person importing, exporting or transporting any forest-produce into, from or within, the State of Tripura to present the same to the appropriate officer for examination and check and also to pay the amount, if any, due thereon. He is also obligated to obtain a transit pass in Form-C prescribed by the Rules for any of the above purposes. Sub-rule (2) provides that no person shall remove or transport any timber and firewood from within the State to any place out side the State except under a licence granted by the appropriate Divisional Forest Officer. The sub-rule also prohibits setting up of any depot in the State without such a licence. Sub-rule (3) says that an application for licence shall be submitted in the prescribed form and shall be accompanied by a non-refundable application fee of Rs. 1,000. Sub-rule (4) provides that a licence, if granted, shall be issued on payment of licence fee of Rs. 2,000. (These amounts are fixed irrespective of the value of the forest-produce involved.) Sub-rule (5) provides that on export of timber from the State of Tripura to other States, an export fee not exceeding percent of the market value of the timber/firewood concerned would be leviable. Sub-rule (6) empowers the government to notify the route or routes along which the forest-produce shall be transported to a place outside the State. Sub-rule (7) deals with renewal of licences. Sub-rule (8) says that the quantity of timber and firewood to be exported from the State shall be determined on the basis of availability of forest-produce after catering to the needs of the local people of the State and the requirements of the people of the State.

The High Court has declared that the levy of application fee of Rupees one thousand and of licence fee of Rupees two thousand amounts to levy of tax and is bad This is on the ground that the State has not established the service rendered in lieu of the said fees. The High Court has also held that sub-rule (5), which levies export duty on export of timber from the State is beyond the rule-making power conferred upon the State

A government by Section 41. It has also found fault with sub-rule (8). The High Court has been of the further opinion that Rule 3 violates Article 301 of the Constitution and since the proviso to clause (b) of Article 304 has not been complied with, the rule is liable to be declared unconstitutional.

B The correctness of the judgment is challenged in this appeal by Sri S.S. Javali, learned counsel appearing for the State of Tripura. We have also heard Sri Har Dev Singh, learned Counsel for the respondent who supported the reasoning the conclusion of the High Court besides submitting that the power to regulate conferred by Section 41 of the Act does not empower the State government to prohibit the export of forest-produce C from within the State to a place outside the State as provides by sub-rule (8) of Rule 3. Counsel submitted that the power to regulate does not include the power to prohibit.

We shall first deal with the validity of sub-rule (5) of Rule 3 which D empowers the State Government to levy export duty extending upto hundred percent of the market value of timber/firewood concerned. We agree with the High Court that there is nothing in Section 41 which empowers the State government to levy export duty. The power to levy duty is conferred only upon the Central Government by Section 39 and that power is neither delegated to the State government nor is the State govern- E ment empowered to make rules with respect to the said levy. Neither the powers conferred upon the State government by Section 41 nor the power conferred by Section 76 comprehend the levy of export duty. The power to levy duty is conferred only upon one named authority, viz., the Central Government. It must accordingly be held that sub-rule (5) has been rightly F declared bad.

We next take up the validity of the levy of application fee and licence fee of Rupees one thousand and Rupees two thousand respectively. In our opinion, the High Court was not right in holding that the said fee amounts to tax on the ground that it has not been proved to be compensatory in G nature. In our opinion, the fee imposed by sub-rules (3) and (4) is a fee within the meaning of clause (c) of sub-section (2) of Section 41. It is regulatory fee and not compensatory fee. The distinction between compensatory fee and regulatory fee is well established by several decisions of this Court. Reference may be made to the decision of the Constitution Bench H in *Corporation of Calcutta* v. *Liberty Cinema,* [1965] 2 S.C.R. 477. It has

been held in the said decision that the expression "licence fee" does not necessarily mean a fee in lieu of services and that in the case of regulatory fees, no *quid pro quo* need be established. The following observations may usefully be quoted :

> "This contention is not really open to the respondent for s.548 does not use the word 'fee'; it uses the words *'licence fee'* and those words do not necessarily mean a fee in return for services. In fact in our Constitution *fee for licence and fee for services rendered* are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Art. 110(2) and Art. 199(2) where both the expressions are used indicating thereby that they are not the same. In *Shannon* v. *Lower Mainland Dairy Products Board,* (1938) A.C. 708 = AIR (1939) PC 36 it was observed at pp. 721-722 (of Ac) : (at pp. 38-39 of AIR) :
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> > 'if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds or the Province or for both purposes..... It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.'
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> It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

This decision has been followed in several decisions, including the recent decisions of this Court in *Vam Organic Chemical Industries* v. *Collector of Central Excise, Bombay,* (1997) 1 J.T. S.C. 641 and *Bihar Distillery & Anr.* v. *Union of India,* (1997) 2 J.T. S.C. 20. The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of *quid pro quo* and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41.

A So far as Sub-rule (2) is concerned, it merely provides for a licence for removal of timber or firewood from within the State to any place outside the State and also for setting up or establishing a trading depot with in the Sate. This sub-rule is equally within the four corners of Section 41. Indeed, clause (d) of Section 76 which empowers the State government B to make rules generally to carry out the provisions of this Act also serves as an authority for the said sub-rule.

Objection is next taken to sub-rule (8). It is submitted that the power to regulate conferred upon the State government by Section 41 does not C take in the power to prohibit whereas sub-rule (8) empowers the State government to prohibit the export of timber and firewood if such a course is necessary to cater to the needs of the local people or for meeting the requirements of the people of the State. This in turn raises the question, what is the meaning and ambit of the expression "regulate" in Section 41(1) D of the Act? (Section 41(1) empowers the State government "to regulate the transit of all timber and other forest-produce".) The expression is not defined either in the Act or in the rules made by the State of Tripura. We must, therefore, go by its normal meaning having regard to the context in which, and the purpose to achieve which, the expression is used. As held by this Court in *Jiyajee Cotton Mills Ltd. & Anr.* v. *Madhya Pradesh* E *Electricity Board & Anr.,* [1989] Suppl. 2 S.C.C. 52 the expression "regulate" 'has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the relevant provisions, and as has been repeatedly observed, the court while interpreting the expression must necessarily keep in view the object to be achieved F and the mischief sought to be remedied" (at page 79). Having regard to the context and other relevant circumstances, it has been held in some cases that the expression "regulation" does not include "prohibition" whereas in certain other contexts, it has been understood as taking within its fold "prohibition" as well. It has been held in *K. Ramanathan* v. *State of* G *Tamil Nadu & Anr.,* [1985] 2 S.C.C. 116 that :

> "The word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibition'. The word 'regulate' is difficult to define as having any precise meaning. It is a word of broad import, having H a board meaning, and is very comprehensive in scope .....It has often been said that power to regulate does not necessarily include

the power to prohibit, and ordinarily the word 'regulate' is not synonymous with the word 'prohibit'. This is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the Legislation seeks to remedy."

To the same effect is the decision of this Court in *State of Tamil Nadu* v. *M/s. Hind Stone & Ors.*, [1981] 2 S.C.C. 205. Dealing with the contention that Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 authorises the making of rules regulating the grant of mining leases and that the power does not take in power to prohibit the grant of leases, this Court held :

"We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition'. Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in *G.K. Krishnan* v. *State of Tamil Nadu,* [1975] 1 S.C.C. 375 : 'The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied'. In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia* v. *Bank of New South Wales,* (1950) A.C. 235 = (1949)

A 2 All. E.R. (PC) and we agree with what was stated therein - that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scare mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

We do not think that it is necessary to multiply the decisions except to point out that in a different context, the power to regulate is held not to include the power to prohibit (See *State of Uttar Pradesh* v. *Hindustan Aluminium Corporation,* [1979] 3 S.C.C. 229 at 243.

Sri Har Dev Singh, learned counsel for the respondent, however, brought to our notice a decision of the Constitution Bench of this Court in *State of Mysore* v. *H. Sanjeeviah,* [1967] 2 S.C.R. 361. Section 37 of the Mysore Forest Act is in *pari-materia* with Section 41(1) of the Indian Forest Act, Similarly, clause (b) of sub-section (2) of Section 37 of the Mysore Act is in *pari-materia* with clause (b) of sub-section (2) of Section 41 of the Indian Forest Act. By virtue of the rules made under the Mysore Forest Act, the Government of Mysore totally prohibited the transport of forest-produce between 10.00 P.M. and sunrise. It also placed certain restrictions on the movement of the forest-produce between sunset and 10.00 P.M. as well. This Court held that the power to regulate conferred by Section 37(1)

read with Section 37(2)(b) does not empower the State government to prohibit the movement/transport of forest-produce altogether, observing "*prima facie* a rule which totally prohibits the movement of forest-produce during the period between sunset and sunrise is prohibitory or restrictive of the right to transport forest-produce. A rule regulating transport in its essence permits transport, subject to certain conditions devised to promote transport; such rule aims at making transport orderly so that it does not harm or endanger other persons following a similar vocation or the public and enables transport to function for the public good". The said decision is, however, of no help to the respondent inasmuch as Rule 3 framed by the State of Tripura is not only relatable to Section 41 but also to clause (d) of Section 76. Clause (d) of Section 76, which has been extracted hereinbefore, empowers the State government to make rules generally to carry out the provisions of the Act, which means the carrying out the object and purposes of the Act. The object of the Act is to preserve and protect the forest wealth of the country and to regulate the cutting, removal, transport and possession of the forest-produce in the interest of the States and their people. It is for achieving the above purpose that the Act provides for declaration of reserve forests, formation of village forests and declaration of protected forests. It is for achieving the very purpose that the Act vests, in the government, control over forest and lands not being the property of the government and controls even the collection and movement of drift and stranded timber. It is not a taxing enactment but an enactment designed to preserve, protect and promote the forest wealth in the interests of the nation. It must necessarily take within its fold catering to the needs of the people of the State and that is what sub-rule (8) provides. In our opinion, therefore, sub-rule (8) of Rule 3 is perfectly valid.

We shall now consider the attack based upon Article 301. In our opinion, the reasons for which Rule 3 has been held to be in contravention of Article 301 of the Constitution are unsustainable in law. The impugned Rule 3 is made by the State as the delegate of the Parliament to carry out the purposes of the Act. It is not a law by the legislature of the State of Tripura nor is it a rule made by the Government of Tripura in its capacity as the Government of Tripura. This is the basic distinction between the present case and the decision in *H. Sanjeeviah* where the enactment concerned was a law made by the State legislature and had, therefore, to comply with clause (b) of Article 304. We have also pointed out hereinabove that the Indian Forest Act is a post-constitutional Parliamen-

A tary enactment insofar as Tripura is concerned for the reason that it has been extended to Tripura (which was then a Union Territory) by the Union Territories (Laws) Act, 1950. Sections 41 and 76 are, therefore, laws within the meaning of Article 302 of the Constitution which empowers the Parliament to impose such *restrictions* on the freedom of trade, commerce and
B intercourse between one State and another or within any part of the territory of India, as may be required in the public interest. If Sections 41 and 76 are saved by Article 302, any rule made to carry out the purposes of the said provisions or to elucidate the meaning and purport of the said provisions must equally be protected by Article 302, as held by this Court in *M/s. Krishan Lal Praveen Kumar* v. *State of Rajasthan,* [1981] 4 S.C.C.
C 550.

It is relevant to notice that Article 302 uses the expression "restrictions". In other words, it empowers the Parliament to impose such restrictions on the freedom of trade, commerce and intercourse between one
D State or another or within any part of the territory of India, as may be required in the public interest. Though the expression " restrictions" in this article is not qualified by the word "reasonable", we shall proceed on the assumption, for the purposes of this case, that such restrictions ought to be reasonable. Even so, it would be evident that the provision in Article 302 has a close parallel with clauses (2) to (6) Article 19. Under clauses
E (2) to (6) of Article 19, it has been held by this Court that the power to impose reasonable restrictions takes in the power to prohibit also in appropriate situations (see *Narendra Kumar* v. *Union of India,* [1960] 2 S.C.R. 361). It may also be mentioned that the prime example of the exercise of power under Article 302 is the Essential Commodities Act,
F 1955, which not only empowers the making of the rules for the purpose of regulating the production, supply and distribution of essential commodities but also for prohibiting the production, supply and distribution of essential commodities and trade and commerce therein. For the above reasons, we are of the opinion that Rule 3 of the Tripura Transit Rules cannot be said to be violative of Article 301 nor is it required to comply with the require-
G ment of the proviso to clause (b) of Article 304 of the Constitution.

The levy of duty is sought to be sustained by the learned counsel for the State of Tripura with reference to sub-section (3) and/or sub-section (4) of Section 39. It is submitted that the Princely State of Tripura has
H imposed the said duty and that the same is being continued after the

commencement of the Constitution. Article 305 of the Constitution is also invoked in this behalf. We are unable to appreciate the submission. No order or proceeding of the Princely State of Tripura has been produced before the High Court or this Court levying the duty. We also do not know at what rate and on what basis, if any, the duty was being levied. We are also not sure whether the said plea can fall within the four corners of either sub-section (3) or sub-section (4). Sri Javali requested for grant of some-time to enable the State to produce the proceedings. We are not inclined to accede to this plea either. Having not produced the proceedings/orders either before the High Court or before this Court all these years, the State cannot reasonably ask for more time to produce the same when the matter has come up for final hearing.

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For the above reasons, the appeals is allowed in part. Rule 3 of the Tripura Transit Rules, except sub-rule (5) thereof, is declared to be perfectly valid and effective. The judgment of the High Court is set aside to the above extent.

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No costs.

V.S.S. Appeal allowed.