

Bansal Lumbers Private Limited vs Union Of India & Ors on 9 February, 2023

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 14973/2021

BANSAL LUMBERS PRIVATE LIMITED Petitioner

Through: Mr. Bharat Raichandani and Mr.
Deepak Kumar Khokhar, Advocates.

versus

UNION OF INDIA & ORS.

Through:

Mr. Kirtiman Singh, CG
Waize Ali Noor, Mr. Ma
Ms. Kunjala Bhardwaj,
Jain, Mr. Yash Upadhya
Shreya V. Mehra, Advoc
S. K. Verma, Joint Dir
Raju, PPO, APPQ & S.,
Miglani (Sr,. Legal Of
Respondent/ UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 09.02.2023

1. The Petitioner before this Court has filed the present Writ Petition praying for the following reliefs.

"a) This Hon'ble Court to issue a writ of mandamus and/or certiorari ☐ any other appropriate writ, order or direction, directing the respondents not to insist only for Methyl Bromide as fumigation agent and permit the equivalent fumigation treatment/ agent in accordance with the Regulation 9 of PQ Order, 2003 under PQ Order, 2003 without any payment of any additional fees/ charges/ fine/ penalty, in the interest of justice;

b) This Hon'ble Court be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction, directing the respondents to approve quarantine clearance by issuing NOC for the consignment and permit the petitioner to unload/ remove the timber with one time inspection fees, without charging of any additional or penal fees/fine/penalty in the interest of justice till disposal of this

petition;

c) This Hon'ble Court be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction, quashing, and setting aside the Clause 14 (2) of Chapter VI of the PQ Order, 2003 (ANNEXURE-"WP6") as arbitrary, illegal, unconstitutional and unreasonable in the interest of justice;

d) This Hon'ble Court be pleased to issue a writ of mandamus and/or certiorari or any other appropriate writ, order or direction, quashing and setting aside condition no.3 of impugned Office Memorandum No.8-131/2016-PP.II dated 28.06.2017 (ANNEXURE-"WP1"); impugned Office Memorandum No.8 131/2016-PP II dated 27.12.2018 (ANNEXURE-"WP2") and Office Memorandum No. 8-

325/2019-PP.II dated 19.06.2020 (ANNEXURE-"WP3"); impugned office Memorandum No. 8-325/2019-PP.II dated 16.12.2020 (ANNEXURE-"WP4") and impugned Office Memorandum No. 8-325/2019-PP.II dated 04.08.2021 (ANNEXURE-"WP5") in the interest of justice;

e) Pending the admission, hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the respondents not to insist only for Methyl Bromide as fumigation agent and permit the equivalent fumigation treatment/ agent in accordance with the Regulation 9 of PQ Order, 2003 under PQ Order, 2003 without any payment of any additional fees/ charges/ fine/ penalty, in the interest of justice;

f) Pending the admission, hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the condition no.3 of Office Memorandum No.8-131/2016-PP.II dated 28.6.2017(ANNEXURE-"WP1"); Office Memorandum No.8- 131/2016-PP 27.12.2018 (ANNEXURE-"WP2") and Office Memorandum No. 8-325/2019-PP.II dated 19.06.2020 (ANNEXURE-"WP3"); Office Memorandum No. 8-325/2019- PP.II dated 16.12.2020 (ANNEXURE-"WP4") Office Memorandum No. 8-325/2019-PP.II dated 04.08.2021 (ANNEXURE-"WP5") in the interest of justice;

g) for interim and ad-interim reliefs in terms of prayer (a), (b),

(c), (d), (e) & (f) above;

h) for costs of this Petition; and

i) For such and other reliefs as the nature and circumstances of the case may require."

2. Judgment dated 28.06.2022 delivered in the case of M/s ND Timbers Vs. Union of India, SCA No.16280/2021, by Gujarat High Court has been brought to the notice of this Court, wherein the Gujarat High Court has quashed and set aside the provisions of Regulation 14(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003 (hereinafter to be referred to as "PQ Order 2003"), which is also the subject matter of the present Writ Petition. It has also been brought

to the notice of this Court that pursuant to the judgment delivered by the Gujarat High Court, the Government of India has issued an Office Memorandum dated 08.08.2022, implementing the judgment passed by the Gujarat High Court, directing all the Plant Quarantine (PQ) Stations not to realise five time penal fee in case of import of Timber/ Wood from Methyl Bromide phase out countries without fumigation with Methyl Bromide.

3. It has also been stated that a Gazette Notification has also been issued on 13.10.2022 vide which the PQ Order 2003 has been amended and the same is reproduced as under:

"MINISTRY OF AGRICULTURE AND FARMERS WELFARE (Department of Agriculture and Farmers Welfare) NOTIFICATION S. O. 4871 (E). - In exercise of the powers conferred by sub- section (1) of section 3 of the Destructive Insects and Pests Act, 1914 (2 of 1914), the Central Government hereby make the following Order further to amend the Plant Quarantine (Regulation of Import into India) Order, 2003, namely:-

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

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

(ii) In case of consignments requiring pre-shipment fumigation with MBr originating from countries which have phased out the use of MBr for quarantine and pre-shipment purposes, the consignment shall be released after charging the normal inspection fee. The NPPO of the country will be required to submit relevant documents to NPPO India to establish phased out country status. NPPO India would notify the list, which would be updated regularly based on the information received.

[F. NO. 8-34/2021-PP.II] PRAMOD KUMAR MEHERDA, Jt. Secy."

4. In light of the aforesaid notification, no further orders are required to be passed by this Court as the relief prayed by the Petitioner has already been granted by the Respondents.

5. The Writ Petition stands disposed of, accordingly.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J FEBRUARY 9, 2023/aks