

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice
and
The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Writ Appeal Nos. 723 to 725 of 2004
and

W.A.M.P.Nos. 3026,3027, 4393 to 4395 & 1351 to 1353 of 2004

W.A.No. 723 of 2004

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Forest and Fisheries Department,
Fort.St.George,
Chennai - 600 009.
2. The Ranger,
Gulf of Mannar,
National Marine Park,
Tuticorin - 2.

.... Appellants/ Respondents 2 and 4

vs.

1. M/s.Kaycee Industrial Chemicals (P) Ltd.
rep. by its Managing Director,
285/36, WGE Road,
Tuticorin - 628 002.
2. Mr.A.Sailanathan
Partner,
Jothi Lime Industries,
4/227, Muthammal Colony,
5th Street,
Tuticorin - 628 002.
3. Mr.S.Srinivasan
Proprietor,
Industrial Chemicals,
1/268, Kollam Purambu Road,
Kurkkuchalai,
Ottapidaram Taluk,
Tuticorin.

4. Mr.Xavier,
Proprietor,
Island Chemicals,
9/85-A, Kakkarampatti,
Kurukkuchalai Post,
Ottapidaram Taluk,
Tuticorin District.
5. The Union of India,
rep. by its Secretary,
Ministry of Environment and Forest,
New Delhi.
6. The District Collector,
Tuticorin.
7. The Assistant Director of Fisheries,
Tuticorin. ... Respondents/ Petitioners 1 to 4/
Respondents 1, 3 and 5

W.A.No. 724 of 2004

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Forest and Fisheries Department,
Fort.St.George,
Chennai - 600 009.
2. The Ranger,
Gulf of Mannar,
National Marine Park,
Tuticorin - 2. Appellants/ Respondents 2 and 4

1. Mr.C.Sam Manohar,
S/o. Chellaiah Nadar,
52, Davisapuram Road,
Tuticorin.

2. The Union of India,
rep. by its Secretary,
Ministry of Environment and Forest,
New Delhi.

3. The District Collector,
Tuticorin.

4. The Assistant Director of Fisheries,
Tuticorin. Respondents/ Petitioner/
Respondents 1, 3 and 5

W.A.No. 725 of 2004

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Forest and Fisheries Department,
Fort.St.George,
Chennai - 600 009.
2. The Ranger,
Gulf of Mannar,
National Marine Park,
Tuticorin - 2. Appellants/ Respondents 2 &4

vs.

1. Mr.M.Devapitchai,
S/o. Muniappan,
102, Tooveepuram IInd Street,
Tuticorin.
2. The Union of India,
rep. by its Secretary,
Ministry of Environment and Forest,
New Delhi.
3. The District Collector,
Tuticorin.
4. The Assistant Director of Fisheries,
Tuticorin. Respondents/ Petitioner/
Respondents 1, 3 and 5

Appeals filed under Clause 15 of the Letters Patent
against the common order passed in W.P.Nos. 26363 of 2001, 1511 &
40350 of 2002 dated 30.04.2003.

For Appellants in
all the appeals

... Mr.V.S.Sethuraman
Spl.Govt.Pleader(Forest)

For Respondent 1
in W.A.No.725/04

... Mr.R.Thiagarajan
Senior Counsel for
M/s.Aiyar and Dolia

For Respondents 6 & 7
in W.A.No.723/04 and
respondents 3 & 4 in
W.A.No.724 & 725/04

... Mr.V.Raghupathy
Government Pleader

J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

These three writ appeals have been filed against the common order in three writ petitions being W.P.Nos. 26363 of 2001 and 1511 and 40350 of 2002 dated 30.04.2003.

2. Heard the learned counsel for the parties, and perused the records.

3. In all the writ petitions, the petitioners have prayed for a Writ of Certiorari to quash the notification dated 11.7.2001 issued by the first respondent, Union of India, represented by its Secretary, Ministry of Environment and Forests, New Delhi. By that notification, the Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the Act') has been amended by including various species to the schedule. The species with which we are concerned are as follows: -

" Part IV A - Coelenterates

1. Reef Building Coral (All Scleractinians)
2. Black Coral (All Antipatharilans)
3. Organ Pipe Coral (Tubipora musica)
4. Fire Coral (All Hillipora species)
5. Sea Fan (All corogenians)"

4. The petitioner in W.P.No. 26363 of 2001 is a Company registered under the Indian Companies Act. It is engaged in the manufacture of Lime. It was established in the year 1996. It is alleged in paragraph-3 of the affidavit filed in support of the writ petition that on 08.10.2001, the Forest Ranger, Gulf of Mannar National Marine Park/the fourth respondent, orally informed the writ petitioners that all corals have been included in Schedule I, Part IV A of the Act. The said notification issued by the Ministry of Environment and Forests warned of legal action under the Act against purchase, transportation or use of any kind of coral.

5. It is alleged in paragraph-4 of the petitioner's affidavit that the petitioners are using a hard, white calcareous substance called 'coral'. This coral is a lifeless substance which is secreted by marine polyps (also called coral). When the marine polyps die due to various reasons, the secreted calcareous

lifeless substance breaks from the coral and falls on the sea floor, and the same is carried away by sea currents and washed ashore. The same is collected by the fisherfolk, and are sold to the petitioners for the manufacture of lime.

6. It is alleged that the coral reefs are protected by the formation of Gulf of Mannar National Marine Park by G.O.Ms.No.962, Fisheries and Forest Department dated 10.09.1986 issued by the State of Tamil Nadu/second respondent. It is submitted that only the white calcareous substances, which are washed ashore outside boundaries of the National Marine Park, are collected by the fisherfolk for supplying the same to the lime factory. It is alleged that the notification dated 11.7.2001 issued by the first respondent/ Union of India, is arbitrary and unreasonable, and it is liable to be quashed. It is alleged that there is no life in the calcareous substance purchased by the petitioners. It is not a living organism. Hence, it is alleged that it does not come within the purview of the Act. It is alleged that the livelihood of the persons employed in lime industries have been affected on account of the issuance of the impugned notification. It is alleged that the petitioners were not given opportunity of hearing before issuance of the impugned notification.

7. A counter affidavit has been filed in the aforesaid writ petition, and we have perused the same. In paragraph-4 of the counter affidavit, it is stated that corals are extremely slow growing and sedentary organisms with only the tip bearing the live animals. These live corals secrete calcareous substances around their bodies for protection from ocean currents. The status paper on coral reefs of Gulf of Mannar prepared by Zoological Survey of India indicates that the coral reefs and their associates in Gulf of Mannar are under severe threat due to industrialization, pollution and mining of corals by the local people. It is alleged that large scale exploitation of corals, fishes, and others has driven many species to extinction in these islands. It is alleged that the corals are invariably collected from the sea beds by breaking the natural attachment to the sub-stratum causing extensive ecological damage to the whole eco system. It is alleged that this activity is illegal under the provisions of the Act. It is alleged that the contention of the petitioners that the corals break away from the reefs and are carried away from the sea currents and finally collected by the fishermen is misconceived. The corals are mostly damaged by the trawlers that move inside the creeks for illegal fishing and in turn damage the corals which are collected by the people for use as raw material by the lime industry. It is alleged that these industries cannot sustain on incidentally broken corals brought ashore with sea currents. Such a quantum can only be produced through exploitation. The collection of corals and coral reefs for manufacture of lime is also a prohibited activity under the Coastal Regulatory Zone Notification 1991, and invites penal action under the provisions

of Environment (Protection) Act, 1986. It is alleged that the corals are wild animals and form an integral component of the marine ecosystem, and therefore the notification issued on 11.7.2001 comes within the ambit of the Act. Corals, whether dead or alive, are the property of the Government. Collection, possession and trade in such species is illegal.

8. Before dealing with the submissions advanced by the learned counsel for the parties, we may refer to certain provisions of the Act.

9. The Preamble of the Act states: -

"An Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto."

10. Section 9 of the Act states: -

" Prohibition of hunting: - No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under Section 11 and Section 12."

11. The word 'animal' is defined in Section 2(1) of the Act as follows: -

" 'animal' includes amphibians, birds, mammals and reptiles and their young, and also includes, in the cases of birds and reptiles, their eggs".

12. Section 2(2) of the Act defines "animal article" as follows: -

" 'animal article' means an article made from any captive animal or wild animal other than vermin, and includes an article or object in which the whole or any part of such animal has been used, and ivory imported into India and an article made therefrom"

13. Section 2(36) of the Act defines " wild animal" as follows: -

" 'wild animal' means any animal found wild in nature and includes any animal specified in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V, wherever found."

14. Section 39 of the Act states: -

" Wild animals, etc., to be Government Property - (1) Every -

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of Section 29 or sub-section (6) of section 35 or kept or bred in captivity or hunted in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act

shall be property of the State Government, and where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the nearest police station or the authorized officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorized officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorized officer -

- (a) acquire or keep in his possession, custody or control, or
- (b) transfer to any person, whether by way of gift, sale or otherwise, or
- (c) destroy or damage,
such Government property."

15. Section 2(37) of the Act defines "wild life" as follows: -

" 'wild life' includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which form part of any habitat"

16. Chapter VA of the Act relates to prohibition of trade or commerce in trophies, animal articles etc, derived from certain animals. This chapter was inserted by Act 28 of 1986. Section 49B of the Act states that on and after the specified date, no person shall commence or carry on the business of dealings in trophies, animal articles, etc. derived from scheduled animals. Chapter VI of the Act deals with prevention and detection of offences.

17. Section 61 of the Act permits the Central Government, if it is of the opinion that it is expedient so to do, by notification add or delete any entry to or from any schedule. Thus, the impugned notification has been issued under Section 61 of the Act, which specifically permits the Central Government to add or delete any entry to or from any schedule.

18. By the impugned judgment, the learned single Judge has held that the inclusion of "Reef Building Coral" in the schedule to the Act by the notification dated 11.7.2001 by itself does not authorize the respondents to interfere with the business of the petitioners, who are only purchasing the "coral reef" or outer skeleton of dead sea animal, which is washed ashore after the death of the reef building coral. According to the learned single Judge, coral is a hard stony substance secreted by certain colonial marine animals as an external skeleton typically forming large reefs. The learned single Judge was of the view that the external skeleton of dead marine animals forming such reef by itself cannot be considered as "Reef Building Coral". The learned single Judge held that reef is an outer skeleton of the dead marine animal, which is severed from the dead animal and washed ashore. Hence, the learned single Judge was of the view that it cannot be considered as "wild life" or "wild animal" as defined in the Act.

19. As regards the submission of the learned counsel for the Forest Department that the sea-farers catch the live animal by venturing into the sea and kill the animal by severing the external skeleton reef from the animal and for that purpose action has been taken against the petitioners, the learned single Judge was of the view that the authorities under the Act are not powerless to prevent the persons violating the provisions of the Act. However, as stated above, the learned single Judge was of the view that the Act does not authorise the respondents to interfere with the business of the petitioners if they only purchase coral reef i.e., outer skeleton of dead sea animal, which is washed ashore after the death of the reef building coral. We fully agree with the view taken by the learned single Judge.

20. When we interpret and apply the provisions of the Wild Life Act, in our opinion, we must utilize the Heydon's rule of interpretation (the mischief rule). In other words, we must see the mischief which was prevailing before the said Act was enacted, and the reason why the said Act had to be made. Obviously, the purpose of introducing the Wild Life (Protection) Act was that the wild life in India was being destroyed by industrialization, poaching, etc. and it had to be protected so as to preserve the ecological balance. Keeping this primary object of the Act, we cannot say that the activities of the writ petitioners violate the provisions of the Act.

21. According to Collins Concise Dictionary, the word "coral" has two meanings : -

- " (i) any of a class of marine colonial; and
- (ii) the calcareous or horny material forming the skeleton of certain of these animals.

The word 'coral' also means "a rocklike aggregation of certain of these animals or their skeletons, forming an island or reef."

22. In The Chambers Dictionary, the word 'coral' is defined as follows: -

" a rocklike substance of various colours deposited on the bottom of the sea formed from the skeletons, mostly calcareous, of certain invertebrates of the classes"

It is also defined in the same dictionary as follows:-

" the invertebrates themselves"

23. In the New International Webster's Dictionary and Thesaurus, the word 'coral' is defined as follows: -

"The calcareous skeleton secreted in or by the tissues of various, usually compound marine coelenterates and deposited in various forms and colors. 2. These skeletons collectively 3. An animal of this type."

24. In Concise Oxford Dictionary, the word "coral" has two meanings : -

" (i) A marine living organism and (ii) Secretion of the above living organism which is a calcareous substance. The said calcareous substance is called "Coral Reef". This coral is a lifeless substance which is secreted by marine polyps"

25. Thus the word "coral", as defined in the various dictionaries, has broadly two meanings: -

- (i) A marine living organism; and
- (ii) Secretions of the above living organism, which is a calcareous substance called 'Coral Reef', which is a lifeless substance secreted by marine polyps"

26. It is contended by the writ petitioner that when the marine polyps die due to various reasons, the secreted calcareous lifeless substance breaks from the coral reef base and falls on the sea floor and the same is carried away by sea currents and washed ashore. The same is collected by fisherfolk and are sold to the petitioners for manufacturing lime.

27. On the other hand, the stand of the respondents in the writ petitions (appellants herein) is that the corals are collected from the sea beds by breaking the natural attachment to the sub-stratum and the corals are mostly damaged by the trawlers that move inside the creeks for illegal fishing and in turn they damage the corals which are collected by the people for use as raw material by the lime industry.

28. Since there is a factual controversy on this point, it is not possible for us to decide the same in writ jurisdiction.

However, we are of the view that if the contention of the writ petitioner that when the marine polyps die due to various reasons, and the secreted calcareous lifeless substance breaks from the coral reef base and falls on the sea floor and the same is carried away by sea currents and washed ashore on the coast, is correct, then in our opinion the Act does not apply to the same.

29. It may be noted that the expression "animal article" in Section 2(2) of the Act means "an article made from any captive animal or wild animal". In our opinion, the word 'made' used in the definition denotes the process involving human effort. Hence if the stand of the writ petitioner that secreted calcareous substance breaks from the coral reef base on its own and falls on the sea shore is correct, then obviously it cannot be called 'animal article', because it was not made by human effort.

30. It may be noted that the definition of 'animal' in Section 2(1) of the Act includes only living organisms. The coral reef fragments being a calcareous substance cannot be included in the definition of 'Wildlife' or 'Wild Animal' by any stretch of imagination.

31. Learned counsel for the writ petitioner submitted that the 'coral reefs' survive only in calm, shallow and clear water where there is sufficient sunlight penetration for photosynthetic activity by the symbiotic algae present in the coral polyps to sustain their basic food energy needs of both. Once the symbiotic algae are killed due to unavailability of sufficient light and rise in sea temperature, the coral polyps also perish subsequently. Once the coral is dead, the calcareous secretion later gets bleached, becomes vulnerable to bacterial attacks and gets weakened in due course. They are further damaged by the changed ambient physio-chemical conditions. Subsequently, bits are broken off from the base of the calcareous rocks (Coral reefs) by waves, currents, streams of tidal force etc. and carried further away from the original habitat and becomes a waste calcareous material on the seashore. It is true that corals when alive are part and parcel of the coral calcareous substance and hence the living and non-living parts of the corals are inseparable. However, once the symbiotic algae and polyps are dead, what remains is the chemical calcareous substance having been secreted by the polyps. When these calcareous substance are washed away into a new altogether different inter-tidal environment, the adjective either living or nonliving cannot be attached to these substances. It is akin to substances like fallen hair, waste nail clippings of human beings, etc. As a matter of fact, once the coral polyps die, due to natural phenomenon like high sea temperature and pollution, the calcareous substance secreted by it gets washed ashore. The petitioners do not indulge in any mining

activities to collect the same. The activities carried on by the respondents herein do not result in destruction of any habitat. Only the coral reef fragments, which are washed ashore by sea currents, are collected by the respondents herein.

32. We agree with the learned counsel for the writ petitioners (respondents in these appeals) that if the factual averments in the petition are correct Sections 2(1) and 2(2) of the Act will not be applicable to the coral reef fragments which the petitioners are using, since the same are not living organisms at all.

33. Learned counsel for the writ petitioners submitted that the coral reef fragments collected by the respondents/writ petitioners for the manufacture of lime will not in any way affect the fish production nor will the collection of the reefs endanger the betterment of the people who depend on the marine eco system for their livelihood and that as long as the coral reef fragments are utilised for the purpose of manufacturing of lime without affecting the natural habitat, it is not open to the appellants to prevent the respondents from collecting the calcareous substance, since the coral reef fragments are broken bits of coral reef which are washed ashore by sea currents, and therefore no destruction of wildlife habitat is done by the respondents/writ petitioners.

34. Learned counsel for the writ petitioners also submitted that the collection of calcareous substance is also beneficial to the fisherfolks in as much their services are utilised for collecting the same and therefore, the interest of fisherfolks in particular and that of the public at large is protected.

35. Learned counsel for the writ petitioners further submitted that once the marine living organism coral dies on account of global warming, discharge of hotwater into the sea by the Tuticorin Thermal Power Station etc., the dead marine living organism coral is attacked by bacteria and eaten away, and after eating away the coral, the bacteria bores into the secreted calcareous substance thereby weakening it and the same gets broken by tidal waves and the broken substance which falls on the sea floor are carried away by the sea current and the same reaches the sea shore and once the dead organism is eaten away, the secreted portion will break.

36. Learned counsel for the writ petitioners then submitted that they do not go to the coral island for collecting the coral reef fragment and they collect only the washed ashore material which gets carried away on account of natural phenomenon like sea

currents. Further the respondents herein do not indulge in any act that would damage the coral reef. As already stated, the petitioners use the secreted calcareous substance which is washed ashore. It is submitted by the learned counsel that the coral reef fragment is not an animal trophy. As per Section 2(31) of the Act, Animal trophy would include hair, feather, bones, shell etc. As already stated, the coral reef fragments are secretions of coral which are calcareous substances and the same will not come under the purview of Sections 2(31) and 39(b) of the Act since secretions are not specifically included in the definition of animal trophy and it is also submitted that coral reef fragments are not wildlife trophy since secretions of wildlife is not specifically included in the definition of wildlife trophy. It is also submitted that the removal of the coral reef fragments from the sea shore will not in any way affect the live corals. It is contended that the appellants are not right in stating that the coral reefs are removed by mining process.

37. Lastly it is submitted by the learned counsel that the removal of coral reef fragments will not in any way affect the complex interplay between physical, chemical, faunal and floral elements in the near shore systems and such averments are made with a view to prejudice the mind of this Court to show as if the respondents are causing damages to the natural habitat.

38. We are in entire agreement with the view of the learned counsel for the writ petitioners/respondents that the activities carried on by them, if factually correct, do not violate any of the provisions of the Act.

39. We have already noted above that the word 'coral' can have two meanings i.e., (i) a marine living organism; and (ii) secretions or dead outer skeleton of the said living organism. In our opinion, the items mentioned in the notification dated 11.07.2001 only refer to the living marine organism, and not the dead secretions, being the outer skeleton of the dead sea animal. Hence, the second interpretation of the word 'coral' does not, in our opinion, come within the ambit of the impugned notification dated 11.07.2001. In our opinion, the interpretation which we are taking will be in consonance with the aims and objects of the Wild Life Protection Act. As already stated above, Heydon's rule of interpretation (the mischief rule) has to be applied in this case, and we have to see the mischief which was sought to be rectified by the law. That mischief is stated in the Statement of Objects and Reasons of the Wild Life Protection Act, 1972.

40. The Statement of Objects and Reasons state: -

" The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this Country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912) has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

Having considered the relevant local provisions existing in the States, the Government came to the conclusion that these are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto."

Thus, the object of the Act was to protect wild life in this country which was in danger of becoming extinct, thereby disturbing the ecology of the environment.

41. In our opinion, therefore, it is not necessary to give a wider definition of the word 'coral' (so as to include both the meanings of the word 'coral') to sub serve the purpose of the Act. In this way by giving a narrower meaning of the word 'coral' we will be striking a balance, and will not interfere with the livelihood of a large number of people, who depend upon gathering such dead coral and selling them.

42. In our opinion, the learned single Judge has taken a correct view and hence it is not necessary to strike down the

impugned notification, but instead it has to be interpreted in the manner suggested by the learned single Judge.

43. We, therefore, make it clear that as long as the writ petitioners do not catch and kill alive animals by severing their external skeleton, but only purchase the coral reef being the outer skeleton of the dead sea animal, which is washed ashore after the death of the reef building coral, the authorities have no right to interfere with the activities, as they do not violate the provision of the Act.

44. With these observations, the writ appeals are dismissed. No costs. Consequently, W.A.M.Ps are also dismissed.

pv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

1. The Secretary to Government,
of Tamil Nadu
Forest and Fisheries Department,
Fort.St.George,
Chennai - 600 009.
2. The Ranger,
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Tuticorin.

5. The Assistant Director of Fisheries,
Tuticorin.

+ 1 cc to Mr.R. Thiyagarajan, SC for Mr.Aiyar and Dolia, Advocate
in SR 14725

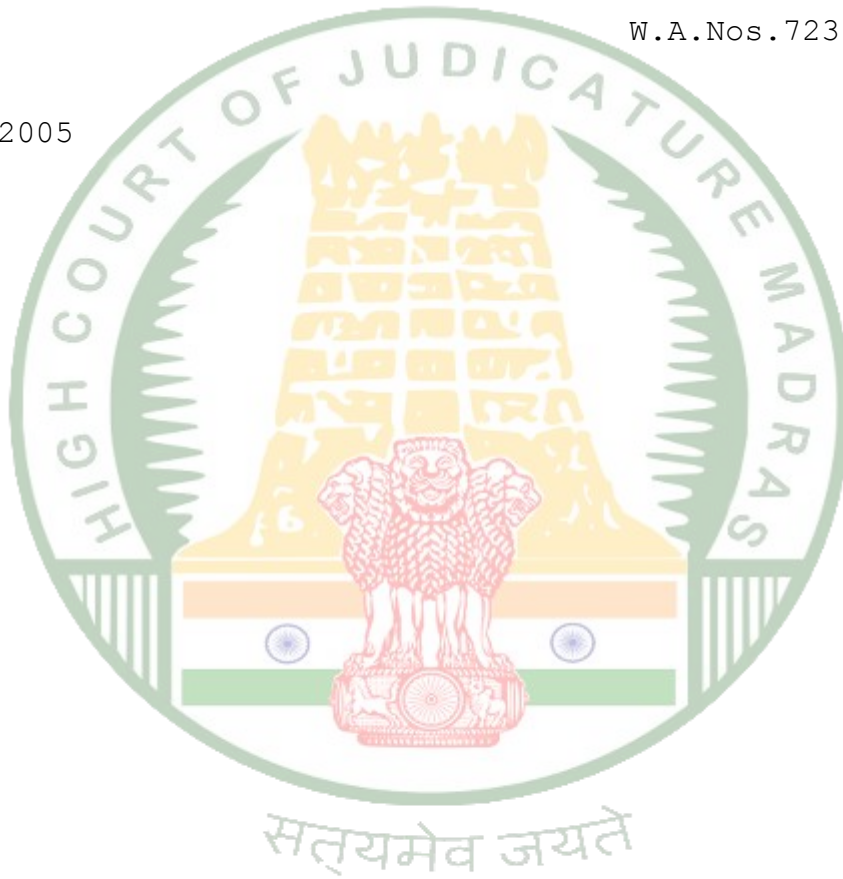
+ five ccs to Spl Government Pleader (Forests) in SRs.14690,
14840, 14839, 14838.

Judgment in

W.A.Nos.723 to 725/2004

PSI (CO)

SR/5.4.2005



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