

(1999) 11 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 1297 of 1998 (R)

Ainui Khan @ Enul Haque Khan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-1999

Acts Referred:

Bihar Forest Produce (regulation Of Trade) Act, 1984 — Section 5
Essential Commodities Act, 1955 — Section 6B
Forest Act, 1927 — Section 41, 42

Citation : (1999) 11 PAT CK 0005

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V. Shivnath and S.K. Sinha, for the Appellant; JC to GA, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of appropriate writ for quashing the order dated 22.9.97 passed by the respondent no. 2, the Secretary, Forest and Environment Department, Government of Bihar, Patna in Case No. VAN MUM (C) 26/96. whereby he has confirmed the orders dated 24.5.96 and 27.11.92 passed by the respondent no. 3, Deputy Commissioner, Ranchi in Forest Appeal Case No. 17 R 15/94-95 and Divisional Forest Officer, East Division, Ranchi in Confiscation Case No. 25/92 confiscating the vehicle.

2. The vehicle bearing registration No. BPN 9927, owned and possessed by the petitioner, was seized and confiscated for the alleged violation of Section 5 of the Bihar Forest Produce (Regulation of Trade) Act, 1984 (hereinafter referred to as the Act of 1984). It appears that the truck was checked on 18.8.92 by the Forest Guard at Khunti Check Post and it was found carrying Kusum seeds without any valid papers. Accordingly a prosecution report was submitted by the Forest Authority before the Sub-divisional Judicial Magistrate, Khunti and a case was

registered being Forest Case No. 26 IIC of 1992 u/s 41 and 42 of the Indian Forest Act. Besides initiating a criminal case, a confiscation proceeding was also initiated in respect of the seized truck belonging to the petitioner by the Divisional Forest Officer, East Division, Ranchi, vide Confiscation Case No. 25/92 for violation of the provisions of the said Act of 1984. In the said confiscation proceeding final order was passed on 27.11.92 confiscating the aforesaid truck. Against the ex-parte order dated 27.11.92 passed by the confiscating Authority the petitioner preferred an appeal before the Deputy Commissioner. The appellate authority finally heard the appeal and dismissed the same by confirming the order passed by the confiscating authority. The petitioner then preferred a revision before the respondent no.2, the Secretary, Forest and Environment Department, Government of Bihar, Patna, which was numbered as VAN MUM (C) No. 26/96. The Revisional Authority, after hearing both the parties, dismissed the revision and confirmed the order passed by the appellate authority.

3. Mr. V. Shivnath, learned counsel appearing for the petitioner, assailed the impugned orders as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that the Divisional Forest Officer, exercising power of confiscating authority, has passed ex parte order in the confiscation proceeding without issuing any notice to the petitioner and without giving any opportunity of hearing. Learned counsel submitted that the vehicle, which was seized by the Forest Authority, was later on released by an order of this Court dated 28.8.92 passed in Cr.W.J.C. No. 286 of 1992 (R). The petitioner could learn about the confiscation proceeding only on 10.8.93 when he received notice dated 30.7.93 from the Divisional Forest Officer, Ranchi asking him to surrender the vehicle by 20.8.93. On receipt of notice the petitioner enquired from the office of Divisional Forest Officer then he could know that the Divisional Forest Officer had passed order on 27.11.92 confiscating the truck in the aforementioned confiscation case. Learned counsel, therefore, submitted that the entire confiscation proceeding and the order passed by the Confiscating Authority is vitiated in law for the reason that no notice of confiscation proceeding was ever issued and served upon the petitioner and the petitioner had no notice or knowledge about the said proceeding. Learned counsel further submitted that even assuming that the petitioner had notice or knowledge about the confiscation proceeding that will not fulfil the requirement of service of notice by the confiscating authority before passing a final order in the confiscation proceeding. Learned counsel relied upon decisions of the Supreme Court in the case of Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, , Krishan Lal Vs. State of Jammu & Kashmir, and Smt. Ambika Devi vs. State of Bihar (1987 BLT 334).

4. On the other hand, Mrs. Ritu Kumar, learned J6 to GA, submitted that the vehicle in question was seized while transporting illegal forest produce without any valid document, for which a criminal proceeding as also confiscation proceeding were initiated against the petitioner. It is contended that show cause notice in confiscation proceeding was issued to the petitioner, vide letter No.

3150 dated 27.8.92 but the petitioner deliberately did not turn up till 2.9.92 when he submitted the order passed by this Court in Cr.W.J.C. No. 286/92(R) for the release of the vehicle. According to the learned counsel, therefore, it cannot be believed that the petitioner had no knowledge or notice about the confiscation proceeding. Learned counsel further drawn my attention to Annexure 4 to the supplementary affidavit filed by the petitioner, which is a copy of the entire order sheet of the confiscation proceeding. Learned counsel submitted that after obtaining the order from this Court for release of the vehicle the petitioner appeared in the confiscation proceeding and filed an application together with a copy of the order and prayed to the confiscating authority for release of the vehicle. Accordingly, the vehicle was released. After release of the vehicle the petitioner deliberately did not appear in the confiscation proceeding and the confiscating authority ultimately proceeded ex parte and passed an ex parte order of confiscation of the vehicle. Mrs. Kumar further submitted that the appellate authority and the revisional authority also have gone into the matter in detail and came to a concurrent finding of fact that the petitioner deliberately did not appear in the confiscation proceeding and, therefore, the confiscation order passed by the confiscating authority is perfectly legal and valid. Learned counsel lastly submitted that in the facts and circumstances of the case the decision relied upon by the petitioner does not apply.

5. After having heard the learned counsel for the parties and after perusing the affidavits, the admitted facts emerge are that:

(I) The vehicle of the petitioner was seized on 18.8.92 by the Forest Guard on the charges of carrying Kusum seeds without any valid paper.

(II) A criminal case being Forest Case No. 26 II C of 1992 was registered before the Sub-divisional Judicial Magistrate, Khunti under Sections 41 and 42 of the Indian Forest Act.

(III) A confiscation proceeding was also initiated by the Divisional Forest Officer being Confiscation Case No. 25/92 under the provisions of Bihar Forest Produce (Regulation of Trade) Act, 1984.

(IV) The petitioner filed Cr.W.J.C. No. 286/92(R) in this Court seeking a direction to the confiscating authority for release of the vehicle and this Court on 28.8.92 passed an order for release of the vehicle subject to the final order that may be passed in the confiscation proceeding.

(V) The petitioner appeared in the confiscation proceeding on 2.9.92 and filed an application annexing a copy of the order dated 28.8.92 passed in Cr.W.J.C. No. 286/92(R) and prayed for release of the vehicle.

6. For better appreciation of the case of the parties, it would be useful to quote herein below the order dated 2.9.92 passed by the confiscating authority in Confiscation Case No. 25/92, which reads thus:

Truck Sankhya BPN 9927 ke Malik Ejul Khan urf Enul Haque Manniy Patna Uchch

Nyayalay, Ranchi Bench dwara Cr.W.J.C. No. 286/92 me dinank 28.8.92 ko parit adesh kee satyapit pratilipi ke sath awedan dakhil karte hain, tatha ve apne awedan me Shri A.B. Singh Sahayak wan sanrakshak, Khunti kshetra ko truck mukt karne hetu arj karte hain. Manniya Uchcha Nyayalay ke adesh ka awiokan kiya. Manniya Uchcha Nyayalay ke adesh ke alok me awedak to adesh diya jata hai ki truck mukti hetu tin lakh rupye bond saman rashi kee do prati bhutiyo ke sath tatha ish ashay ka sopath patra dakhil kre ki na to truck badlenge or na uska swarup ya rang hi badlenge. Unhe yeh bhi adesh diya jata hai ki ve apna photo Thana Prabhari, Murhu Thana se abhipramanit kra kar Iawen.

6. It is, therefore, evident that the petitioner approached this Court in Cr.W.J.C. No. 286/92(R) for release of the vehicle and the order of release was passed by this Court on the condition that the release of the vehicle shall be subject to the result in the confiscation proceeding. The petitioner being aware about the pendency of the confiscation proceeding, appeared in the said proceeding and made a prayer for release of the vehicle which was accordingly released in terms of the direction of this Court.

7. In the light of the admitted facts narrated above, I shall now examine the decisions relied upon by the petitioner.

8. In the case of Chintapalli Agency Taluk Arrack Sales Co-op. Society Ltd. (supra) the order passed by the Government being the revisional authority u/s 77(2) of the A.P. Co-operative Society Act, 1964 was challenged on the ground that no notice was given by the revisional authority to the appellant to make representation which was the mandatory requirement of the Act. In that context, their Lordships of the Apex Court have held that when admittedly no notice was given by the revisional authority to the appellant to make representation which was the mandatory requirement of the Act. In that context, their Lordships of the Apex Court have held that when admittedly no notice was given by the Government to the appellant, there is clear violation of Section 77(2), which is a mandatory provision. Accordingly the order passed by the revisional authority was quashed. Their Lordships further held that even though the appellant had filed some representation in respect of the matter, it would not absorb (sic-absolve ?) the Government from giving notice to the appellant to make representation against the claim of the respondents.

9. In the case of Krishna Lal (supra), the question falls for consideration before the Apex Court was whether non-supply of copy of enquiry report to the delinquent, which was the mandatory requirement of J & K (Government Servants) Prevention of Corruption Act, 1962, will vitiate the order of punishment passed by the authority. It was held that non-supply of the copy of the proceeding of the enquiry to the delinquent would render the order of dismissal a nullity but that would depend upon whether the requirement u/s 17(5) is general which is for the benefit of the individual concerned or serves a public purpose.

10. In the case of Smt. Ambika Devi (supra), the fact of the case was that the

Deputy Commissioner proposed to cancel the Jamabandi created in favour of the petitioner on the ground that the petitioner had no right or title to the land in question. In that context this Court held that when an individual right to property is adversely effected (sic-affected ?), the authority is required to give prior notice of the proposed action and any order passed in a proceeding for cancellation of Jamabandi without notice to the concerned person, would be illegal and void.

11. In the case of Chandeshwar Mahto and Others Vs. State of Bihar and Others, , it was held by a Division Bench that Section 6-B of the Essential Commodities Act, 1955 enjoins the duty upon the authority to issue a show cause notice before passing an order of confiscation. Simply because a person has got any knowledge or information aliunde of. any confiscation proceeding already initiated by any Collector or authority, that would not absorb (sic-absolve ?) the said authority from following the statutory procedure prescribed u/s 6-B of the said Act.

12. As noticed above, in the instant case, from perusal of the order sheet of the confiscation proceeding, it appears that on 2.9.92 the petitioner appeared in the confiscation proceeding and filed an application for release of the truck in terms of the direction of this Court passed in Cr.W.J.C. No.286/92(R). On the next date i.e. on 3.9.92 the petitioner again appeared and furnished a bond for release of the truck. The confiscating authority, therefore, adjourned the case on several dates for appearance of the petitioner and for filing show cause but the petitioner after release of the truck deliberately did not appear in the confiscation proceeding. In that view of the matter, I am of the definite opinion that the decision relied upon by the petitioner does not apply in the facts and circumstances of the present case.

13. Besides the above, from perusal of Annexure 4 to the supplementary affidavit, which is the order sheet of confiscation proceeding, it is clear that on 8.8.92 an order was passed by the Confiscating Authority for issuance of show cause notice not only to the petitioner but also the driver of the truck who was made party in the confiscation proceeding. The endorsement made in right side column of the order sheet shows that notices were issued to the petitioner and the driver of the vehicle. It was only thereafter the petitioner appeared on 2.9.92 in the confiscation proceeding and made a prayer for release of the vehicle, which shows that by the notice issued by the confiscating authority the petitioner learnt about the confiscation case and after release order passed by this Court the petitioner directly appeared before the confiscating authority in the confiscation proceeding and made a prayer for release of the vehicle.

14. Having regard to the entire facts and circumstances of the case, I am of the opinion that there is no violation of the principles of natural justice or any manadatory requirement of law by the confiscating authority before passing the impugned order of confiscation.

15. In the result, I do not find any merit in this writ application, which is

accordingly dismissed.