(2006) 03 AHC CK 0177

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 78955 of 2005

Ashok Kumar Anandani and Others APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Forest (Conservation) Act, 1980 — Section 2(1)
Forest Act, 1927 — Section 2(1), 2(4)

Citation : AIR 2006 All 246 : (2006) 3 AWC 2295 : (2006) 2 RD 77

Hon'ble Judges : Saroj Bala, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Satya Prakash Singh, for the Appellant; Vishnu Pratap and S. Rathi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioners who are 15 in number, have sought the following reliefs:-

(i) to issue a writ of certiorari, order or direction in the nature of certiorari quashing the orders dated 25.11.2005 and 29.11.2005 filed as Annexures 1 and 2 to the writ petition;

(ii) to issue a writ of mandamus, order or direction in the nature of mandamus commanding and directing the respondents not to realise transit fee from the petitioners or from any truck of the petitioners carrying excavated mineral from the lease hold area of the petitioners going to purchaser destination while using national highway passing through Jalaun-Auraiya road, Shivpuri-Bhignipur road, Orai-Rath road, Ate-Kotra road and Kalpi-Hamirpur road;

(iii) to issue any other writ, order or direction which this Hon''ble Court deem fit and proper under the facts and circumstances of the case and to which the petitioners are entitled in law;

(iv) to award cost of the petition to the petitioners.

2. Briefly stated, the facts giving rise to the present petition are as follows:-

According to the petitioners, they have been granted mining leases for excavation of stone ballast, Khanda and boulder under the provisions of the U.P. Minor Minerals Concession Rules, 1963 (hereinafter referred to as "the Rules"). The lease has been granted for a period of 10 years and is still subsisting either on account of its renewal or on account of initial grant. They are excavating stone ballast, Khanda and boulder from their respective areas. According to the petitioners, villages Digara, Gora Macchiya, Dunara, Bijauli, Dangriya, Palli Pohari and Khailar situate in Pargana, Tehsil and District Jhansi are outside the forest area. There is neither any reserved forest nor any protected forest nor any private forest adjoining to the aforementioned villages. These villages are in the shape of Pathari villages where Khanda and boulder are available. After the mining activities, the excavated minerals are lifted and transported from the mining site and are transported using Gaon Sabha road and thereafter it reaches the national highway No. 25. These villages are situated near the national highway and there is no forest at all anywhere while transporting the mineral from the mining site of the lease holder areas and going to purchaser destination in Etawah, Jalaun, Lucknow, Kanpur, Unnao etc.

3. The mining leases have been granted to the petitioners after obtaining no objection from the Department of Forest in view of the directions given by the Apex Court in the matter of T.N. Godavarman Thirumulkpad v. Union of India and Ors., decided on 12.12.1996. According to the petitioners, prior to the judgment of this Court in the case of Kumar Stone Works and Ors. v. State of U.P. and Ors. Civil Misc. Writ Petition No. 975 of 2004, decided on 27.4.2005, no transit fee was being charged from the petitioners in respect of transportation of stone ballast, Khanda and boulder. The Conservator of Forest/Regional Director, Bundelkhand Region, Jhansi, vide order dated 25.11.2005, has directed for establishment of check post at various places in the district of Jalaun for checking/regulating the export of timber and other forest produce. By another order dated 29.11.2005, the Deputy Conservator of Forest, Orai, has directed the Forest Range Officer, Jalaun, Kalpi, Orai, Eta and Kadaura to act in accordance with the judgment of this Court in Civil Misc. Writ Petition No. 975 of 2004, dated 27.4.2005 wherein boulder, Gitti, sand, etc. have been treated as forest produce. According to the petitioners, the order dated 29.11.2005 is wholly misconceived as the decision in Civil Misc. Writ Petition No. 975 of 2004 are not applicable to the minerals excavated in the lease hold area which is outside the forest and transportation is through the State highway or the national Highway where the Forest Department has no concern. Stone ballast, Khanda and boulders are not and cannot be included within the definition of the forest produce as given in Sub-section (4) of Section 2 of the Indian Forest Act, 1927 (hereinafter referred to as "the Act"). The petitioners have further claimed that they are lifting and

transporting the minerals accompanied by Form MM 11 after depositing the royalty and other expenses in accordance with the provisions of the Rules and, therefore, the respondent authorities cannot charge any transit fee on the same in pursuance of the provisions of the U.P. (Transport of Timber and other Forest Produce) Rules, 1978 (hereinafter referred to as "the Transit Rules"). The sole purpose of the regulation of transit of minor minerals is to check illegal transit which is fully achieved by the Rules and there is no occasion for the Forest Department, U.P., to realise the transit fee for transporting the said minerals from the lease hold areas of the petitioners on the pretext that the said minor minerals comes within the definition of the forest produce and the Transit Rules are not applicable for transporting of minor minerals. The plea of violation of Articles 14 and 19(1)(g) of the Constitution of India has also been raised. The petitioners have also assailed the levy and imposition of transit fee on the ground that no service is being rendered.

4. In the supplementary affidavit filed by the petitioners, it has been stated that they are using Gaon Sabha land or private land of the tenure holders before they reach the national highway No. 25 and there is no forest road surrounding 25 Km. nor there is any forest while transporting the minerals from the mining site of the lease hold area and going to the purchaser destination in Jalaun, Etawah, Lucknow, Kanpur, Unnao, etc.

5. In the counter affidavit filed by Sri S.D. Pandey, Forest Range Officer, Chirgaon, Jhansi, on behalf of the respondent No. 3, it has been stated that there are so many forest areas along the national highway No. 25, for example, Baral Forest Block, Bhujaund Forest Block, Ghateshwar Forest Block, Karguan Forest Block etc. which are situated along the national highway No. 25 in Jhansi Forest Division.

6. In the supplementary counter affidavit filed by Nagendra Bahadur Singh, Forest Range Officer, Jalaun, a copy of the map of Jhansi Forest Division has been filed to show the barriers of the Forest Department through which the petitioners and other persons transport their minor minerals.

7. In the rejoinder affidavit filed by Ashok Kumar to the counter affidavit of Sri S.P. Pandey, it has been stated that there may be several forest areas adjacent to the national highway No. 25 but so far the area from where the petitioners are having the right of egress and ingress, there is no forest. They are not using any forest road but are using only Public Works Department road and the national highway and, therefore, there is no question of applicability of transit fee over the petitioners.

8. We have heard Sri S.P. Singh, learned Counsel for the petitioners, and Sri Vishnu Pratap, learned Standing Counsel.

9. At the outset it may be mentioned here that Sri S.P. Singh, learned Counsel, did not question the correctness of the decision of this Court in the case of Kumar Stone Works (supra) and the arguments proceeded on the question of

levy and demand of transit fee on transportation of stone ballast, Khanda and boulder in the light of the aforesaid decision.

10. Sri S.P. Singh, learned Counsel, submitted that this Court in the case of Kumar Stone Works (supra) has not held as a rule that stone ballast, Khanda, boulder, rocks, sand, morrum to be the forest produce in general. It would become forest produce only when it is brought from the forest and would fall under Sub-clause (iv) of Clause (b) of Sub-section (4) of Section 2 of the Act. As the petitioners had not transported the goods in question from any forest or through any forest land, they are not liable to pay any transit fee. The demand of transit fee from the petitioners on the assumption that this Court in the case of Kumar Stone Works (supra) has declared boulders, rocks, sand and morrum etc. to be forest produce under the Act and the Transit Rules, is wholly misconceived and on a wrong assumption.

11. Sri Vishnu Pratap, learned Standing Counsel, however, submitted that the national highway No. 25 passes through forest as there are several forest blocks over the said national highway and transit fee is being realised at the check post only when the vehicles of the petitioners transporting the goods in question cross the forest area. Referring to the map filed alongwith the supplementary counter affidavit, he submitted that it is incorrect to state that there is no forest area along the national highway No. 25 and, in fact, the said national highway passes through the forest. Thus, the levy of transit fee is in accordance with the judgment of this Court in the case of Kumar Stone Works (supra). According to him, if the petitioners are not transporting the goods from the forest, there would be no question of crossing the check post established by the Forest Department as these check posts have been established near the forest area.

12. Having given our thoughtful consideration to various points raised by the learned Counsel for the parties, we find that in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, the Apex Court has held that the word "forest" must be understood according to its dictionary meaning which description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purposes of Section 2(1) of the Forest Conservation Act.

13. A Full Bench of the Bombay High Court in the case of Janu Chandra Waghmare and Ors. v. The State of Maharashtra and Ors. AIR 1978 Bom 110 has held that the expression ''forests'' in its normal and popular connotation includes all that goes with it, such as, tress with fruits on them, shrubs, bushes, woody vegetation, undergrowth, pastures, honey-combs attached to trees, juices dried on trees, things embedded in the earth like mines and quarries with their produce locked up in the land, wild and stray animals (excluding domestic animals like cows, buffaloes, goats, sheep etc.) living in the forest. The Full Bench of the Bombay High Court has given a wide meaning to the term ''forest''. It has held that if the mines and quarries remain beneath the surface of the earth with minerals, stones and other products locked up in the land, these will

form part of the forest. While referring to the dictionary meaning given in Oxford English Dictionary, Vol. IV at page 422, the Full Bench has held that even the dictionary meaning clearly shows that forest means an extensive tract of land together with the trees and undergrowth which covers such tract and also includes pastures which intermingled with such tract.

14. This Court in the case of Kumar Stone Works (supra) has held that the word ''forest'' would include all that goes with it and even the mines and quarries which remained beneath the surface of the earth with minerals, stones and other products locked up in the land, will form part of the forest. Such goods are being brought from the forest as during transportation they cross the forest, they would be covered under the definition of forest produce under Sub-clause (iv) of Clause (b) of Sub-section (4) of Section 2 of the Act. Thus, the transit fee is payable on stone ballast, Khanda and boulder if they cross the forest during transportation. From the map filed alongwith the supplementary counter affidavit we find that there are several forest blocks along the national highway No. 25 and merely because the petitioners are using the national highway No. 25 for transportation of their produce to various destination situated in Jalaun, Etawah, Lucknow, Kanpur, Unnao etc., it cannot be said that the goods are not brought from the forest. They do pass through the forest and, therefore, the levy and demand of transit fee is perfectly within the four corners of the Transit Rules.

15. So far as the question of creating the check posts by the Forest Department under the order dated 25.11.2005 is concerned, the learned Counsel has not raised any grievance while making his submissions.

16. In view of the foregoing discussions, we do not find any merit in this petition. It is dismissed.

