

(2006) 08 PAT CK 0093
In the Patna High Court
Case No : CWJC No. 11773 of 2003

Dinesh Kumar Gupta and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 301
Forest Act, 1927 — Section 41, 42

Citation : (2006) 3 PLJR 541

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Dhruv Mukherjee, for the Appellant; Chhote Lal Narayan Singh and Mohan Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioners and learned counsel for the respondents. This writ petition was originally filed for a direction to the authorities; (i) to release the truck bearing No. RJ-05G-3349 in favour of petitioner No. 1 and (ii) to release 7398 pieces of unassembled furniture made of 32.151 cubic metre of seesam wood in favour of petitioners No. 1 and 2 or 3, respectively.

2. Subsequently, I.A. No. 5371 of 2003 was filed by the petitioners for adding one more relief to the said writ petition, namely, for quashing order dated 8.11.2003 (Annexure 11) issued by the Divisional Forest Officer, Tirhut Forest, Muzaffarpur, and to quash the entire confiscation proceeding.

3. The claim of the petitioner, in short, is that petitioner No. 1 was owner of the said truck, which he used to give on hire to various transport companies including Bharat Transport, Sitamarhi, as he has got national permit and certificate of fitness etc. and is also duly insured in accordance with law. Petitioner No. 3 is a firm, which is running a saw mill holding valid licence for the same, whereas, petitioner No. 2 is a partner of M/s Rajdhani Crafts, Jaipur

(Rajasthan) dealing in wooden furniture etc. It is further claimed that petitioner No. 2 gave orders for furniture to petitioner No. 3, which was required to be prepared at its saw mill and petitioner No. 3 through the transport company got it loaded on the petitioner No. 1's truck, which was hired for the transportation of the said furniture to petitioner No. 2. It is further submitted that on 13.9.2003, the said truck with the articles/unassembled furniture were seized by the authorities concerned near Rampur Hari Diversion at Runisaidpur in the district of Sitamarhi. Against the seizure of the truck and the articles, this writ petition has been filed.

4. However, subsequently on 8.11.2003 (Annexure 11), a notice was issued by the Divisional Forest Officer, Tirhut Forest Division, Muzaffarpur, directing the petitioners to file their show-cause on 28.11.2003 stating as to why the seized truck and wood should not be confiscated due to violation of specific provisions of Sections 41 and 42 of the Indian Forest Act, 1927 as amended by Bihar Amendment, 1989 (hereinafter referred to as "the Act" for the sake of brevity), failing which, ex parte order was to be passed.

5. Learned counsel for the petitioners submits that after receiving the said notice, it was also challenged in this writ petition by way of amendment petition bearing I.A. No. 5371 of 2003. He further submits that Sections 41 and 42 of the Act, read with the provisions of the Bihar Timber & Other Forest Produce (Regulation of Transit) Rules, 1973 (hereinafter referred to as "the Rules" for the sake of brevity), specifically show that regulatory mechanism has been provided only in respect of "transit of timber etc. within the State or in respect of export and import, but there is no provision for any regulatory mechanism for taking the consignment outside the State. Hence, there was no requirement of any transit permit, if the pieces of furniture were taken from Bihar to Rajasthan and the entire proceeding and the seizure as well as the impugned notice dated 8.11.2003 (Annexure 11) are illegal, arbitrary and perverse.

6. He further relies upon two decisions of this Court; one in the case of M/s Bhartia & Sons vs. State of Bihar, reported in 2001(4) P.L.J.R. 411 and another decision dated 8.7.2003, passed in C.W.J.C. No. 4782 of 2003 (M/s Kirparam Hazarilal vs. State of Bihar), which is annexed to the writ petition as Annexure 9. The second decision is based upon the findings of the first decision.

7. In the case of M/s Bhartia & Sons (supra), the matter has been fully dealt with in paragraphs No. 10 and 11 thereof, which read as follows:-

"10. I am totally unable to accept the submission. On the one hand is the mandate of Article 301 and the question of a fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution and on the other hand what is offered to restrict the constitutional mandate and to circumscribe the fundamental right under the Constitution is a far fetched authorization to the executive by implication based on omission of the rule to cover the field of movement of timber etc. outside the State. The respondent authorities seem to

view the omission and the deficiency in the 1973 Rules as a source of their power to prohibit movement of timber etc. outside the State in disregard of Articles 301 and 19(1)(g) of the Constitution. To me this stand appears to be based on inverted logic. The failure of the State Government to frame rules regulating the transit of timber etc. outside the State does not mean that the movement of timber outside the State is prohibited or that it empowers the executive to issue an order imposing ban against movement of timber outside the State. On the contrary the State Government's failure to frame rules to regulate the movement of timber outside the State simply means that the field is uncovered and there is no control or regulation over movement of timber etc. outside the State.

11. I am also not impressed by the submissions made on Rule 3 of the Rules. Rule 3 cannot be taken out of its context. It is part of the Rules which were admittedly for regulating transit of timber etc. within the State. Therefore, if a consignment of timber etc. is removed from its place with the object of being carried outside the State and it is in fact carried to a place outside the State, then the prohibition of Rule 3 will not apply to the transportation."

8. On the other hand, learned counsel for the respondents vehemently opposes the contentions of the learned counsel for the petitioners and submits that sub-section (2) of Section 41 specifically provides as follows:-

"41(2). In particular and without prejudice to the generality of the foregoing power such rules-

(a) prescribe the routes by which alone timber or other forest produce may be imported, exported or moved into, from or within the State."

9. He also submits that apart from the opening paragraph of the notification of the Rules, the specific provision of Rule 3 provides as follows:-

10. Hence, he submits that the said Rule will include all the timbers and forest produce, which are imported or exported or moved into the State or from the State or moved within the State. Hence, the authorities concerned were fully entitled and were justified in initiating a proceeding and seizing the truck and its contents and is also fully justified in issuing the impugned notice dated 8.11.2003 (Annexure 11).

11. Learned counsel for the respondents further states that in paragraph 3(ii) of their counter-affidavit it is specifically stated that "on 20.9.2003, the Divisional Forest Officer, Muzaffarpur made an enquiry and found that the loaded material in the said truck was not furniture but shawn seesam wood. Hence,, he submits that there was no illegality or irregularity in the impugned proceeding, acts or notices and, accordingly, this writ petition is fit to be dismissed.

12. After considering the arguments of the parties and specific provisions of law as well as the materials before this Court, it is quite apparent that although" it has been stated in the counter affidavit that the material loaded on the truck in

question was not furniture, but shawn seesam wood, but in the F.I.R. (Annexure 7) and the seizure list (Annexure 7/A), it is very clear that the seized articles were mentioned at both the places as "Seasam Chiran furniture". Furthermore, it has been specifically found by this Court that there is no rule at ail regulating the movement of timber etc. both within or outside the State in exercise of power u/ s 41 of the Act. It is also apparent that seesam wood has also not been taken within the ambit of the Bihar Forest Production (Trade) Act, 1984 and the Rules framed thereunder. Hence, the respondent-authorities clearly have no authority or power to prohibit movement of seesam wood outside the State. In the said circumstances, it has been observed in the said orders of this Court that the State Government may make comprehensive Rules regulating the movement of timber within the State or outside the State. Although about 5 years have lapsed since then, but no such Rule has yet been made. Hence, under the aforesaid facts and circumstances, specially in view of the decisions of this Court in the aforesaid two cases, the respondent-authorities concerned had no authority either to seize the truck and the wood nor their notice dated 8.11.2003 (Annexure 11) can be held to be legal or in accordance with any provision of law. However, learned counsel for the petitioners submits that the truck and the seized articles have already been released on the order of this Court dated 16.12.2003 passed in the instant case. Hence, the impugned notice issued on 8.11.2003 (Annexure 11) and the entire confiscation proceeding bearing No. 6/2003 are hereby quashed and the writ application is, accordingly, allowed.