
(2003) 09 JH CK 0059

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4752 of 2003

Janardan Tiwary

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Bihar Forest Produce (Regulation of Trade) Act, 1984 — Section 4
Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 41, 42, 52

Citation : (2004) 1 JCR 25

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

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; M.K. Laik, Senior Standing Counsel-I, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner has prayed for quashing the order dated 10.4.2003 passed by the Secretary, Department of Forest and Environment Government of Jharkhand, Ranchi in Revision Petition No. 7 of 1999 whereby he has affirmed the order dated 16.11.1998 and 1.12.1997 passed by Deputy Commissioner-cum-Appellate Authority and the Divisional Forest Officer-cum-Confiscating Officer, Hazaribagh.

2. It appears that the Tractor and trailer of the petitioner was seized by the Forester on 24.1.1993 on the information that the said Tractor was loaded with Mango woods and 2-3 persons were sitting on the said vehicle. When the Forest Officer intercepted the vehicle, the person sitting in the Tractor fled away and on inquiry it was found that the Tractor was coming from Bijulia Mouza carrying with Mango woods cut from the forest land. A confiscation proceeding was Initiated by the Divisional Forest Officer and after hearing the petitioner passed final order confiscating the Mango wood and the Tractor. Petitioner filed appeal before the Deputy Commissioner, which was finally heard and dismissed. Petitioner then

filed revision before the Secretary, Department of Forest, Govt. of Jharkhand who affirmed the order passed by the Appellate Authority and the Confiscating Authority and dismissed the Revision.

3. Mr.S.S. Choudhary, learned counsel raised the following points :

(i) The revisional authority passed the ordered parte without giving notice and opportunity of hearing to the petitioner.

(ii) The Mango woods are not covered under the Bihar Forest Produce (Regulation of Trade) Act, 1984 and there is no need to take any transit permit for carrying Mango wood. The entire confiscation proceeding is therefore vitiated in law.

(iii) The value of the seized Mango trees would not be More than Rs.5,000/- and as such in lieu of confiscation the Tractor worth more than Rs.4,00,000/-(Four lacs) would not have been confiscated by the authority.

4. So far first point raised by the petitioner is concerned, it transpires from the revisional order that several notices were given to the petitioner but he did not turn up. The revisional authority also got the notice published on 10.2.2003 in the newspaper namely, Hindustan. But inspite of service of notice by publication in the newspaper, petitioner did not turn up. Consequently the revisional authority proceeded to decide the revision application ex parte. In my opinion therefore, the contention of the petitioner on the first point has no substance.

5. The second contention of the petitioner is that the Mango wood is not the specified forest produce as defined in the Forest Produce (Regulation and Trade) Act 1984. No transit permit was required under the said Act and therefore the seizure of the Mango wood and the tractor and initiation of confiscation proceeding is wholly vitiated in law. The submission of the learned counsel is wholly misconceived.

6. The Bihar Forest Produce (Regulation and Trade) Act, 1984 is an Act which was enacted for regulating the trade of the forest produce by creating of a State Monopoly for the public interest. By Section 4 of the said Act the State Government has been empowered to appoint one or more agent in different units for any specified forest produce. Section 5 of the said Act prohibits any person other than the Govt. or Govt. authorized agent to purchase or transport or import any specified produce in any area.

7. The allegation against the petitioner is that he was carrying Mango wood on Tractor from one place to another without obtaining transit permit from the Competent Authority.

8. In the instant case the petitioner is governed by the Rules framed by the Government in exercise of power conferred by Sections 41 42 and 52 of the Indian Forest Act, 1927. The rule is called as "Bihar Ksth Avm Van Utpadan Abhiwahan Viniyaman (Niyamavali) 1973". According to this Rule no person can

carry, transport and export or import even a piece of wood without obtaining transit permit from the competent authority. The appellate authority analyzed the entire facts and evidence in detail and came to a finding that petitioner failed to prove the title of the wood and also failed to prove that the Mango wood was not brought from the forest land. On the contrary, petitioner admitted that because of ignorance of law the transit permit could not be obtained from the Competent Authority. In that view of the matter, I do not find any illegality in the finding recorded by the appellate authority and the revisional authority.

9. Lastly, learned counsel for the petitioner submitted that the value of the wood was less than Rs. 5,000/- and therefore, respondents ought to have imposed a fine instead of confiscating the Tractor which is worth Rs.4,00,000/-(Four lacs). I do not find any substance in the submission made by the learned counsel. From reading of Section 52 of the Indian Forest Act, 1927 as amended by Bihar (Amendment) Act, 1990 the confiscating authority shall not only confiscate the forest produce so seized but also confiscate the tools, arms, vehicles, ropes, chains or any other articles used in committing such offence. In my opinion, no lenient view could be taken against the persons who commit forest offence, particularly cutting and transporting the trees from the forest land.

10. Taking into consideration the entire facts and circumstances of the case, I do not find any infirmity in the order passed by the respondents. This writ application is dismissed.