
(1997) 03 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.P. No. 231 of 1987

Mitthanlal Mishra

APPELLANT

Vs

State Government of M.P. and Others

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Forest Act, 1927 — Section 52, 52(4)

Citation : AIR 1998 MP 67 : (1997) ILR (MP) 71 : (1997) 2 MPLJ 216

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : V.S. Dabir and A.G. Dhande, for the Appellant; P.D. Gupta, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

R.S. Garg, J.

By this petition under Arts. 226 and 227 of the Constitution of India, the petitioner challenges the constitutional validity of Section 52 of the Indian Forest (M. P. Amendment) Act, 1983 and also challenges the order of confiscation passed by respondent No. 2 on 7-1-1987.

At the very inception of the argument, Shri Dabir submitted that he seeks to withdraw the challenge thrown to the constitutional validity of Section 52 of the Indian Forest (M. P. Amendment) Act, 1983.

The case of the petitioner was that he is the owner of the Truck No. M.P. No. 5928, the said truck was in custody and possession of the driver Gokul Prasad who was required under the transit permit to transport certain forest wood from one place to another. In a raid effected on 4-12-1986 the Forest Ranger found the truck carrying some different fresh sawn forest produce and not the one under the permit or transit pass. The Truck was seized. Forest offence was registered and notice was sent to the Judicial Magistrate First Class. Notices regarding confiscation proceedings were issued to four persons but no notice was

issued to the present petitioner.

After hearing parties the competent authority ordered confiscation of the wood and also of the said truck.

The main contention of the petitioner is that the order Annexure C dt. 7-1-1987 has been passed without hearing him although he was entitled to a notice being a person interested in the property i.e., the truck. It is submitted by him that the order passed without hearing the owner of the property is patently contrary to law and is liable to be quashed.

On being asked as to why the said order Annexure C was not challenged in an appeal u/s. 52(A) of the Forest Act (as amended in M.P.) Shri Dabir submitted that various petitions were filed challenging the constitutional validity of the M.P. Forest Act, therefore he also challenged the validity of the Act and order of confiscation.

The Return of the State states that the truck was loaded with fresh sawn timber which was not permitted under the transit pass. According to the Return, the driver had informed the Forest Authority that one Sharda Pandit was managing the affairs in relation to the truck, therefore, notices were issued to the driver Gokul Prasad and Sharda Pandit, the persons who held the transit pass and the person from whom wood was received. According to the return, the respondent did not know that the petitioner was the owner of the truck, therefore, the notice was not issued to the petitioner but, however, according to them, notice to Gokul Prasad who was the driver and agent of the petitioner was sufficient notice to the petitioner.

Shri Dabir learned counsel for the petitioner submits that non-issuance of the notice to the petitioner vitiated the order and the same is liable to be quashed. On the other hand, Shri Gupta learned counsel for the State states that the Authorities are required to issue notice if it appeared to the Forest Officer that the person has some interest in the property.

Section 52 of the Forest Act as applicable to Madhya Pradesh provides the complete procedure in relation to seizure and confiscation of the property involved in forest offence or illegal transportation of the wood. Sub-section (4) of the Section 52 provides that no order confiscating any property shall be made under Sub-section (3) unless the authorised officer issues a notice in writing to the person from whom the property is seized, and to any other person, who may, appear to the authorised officer to, have some interest in such property. The Authorised Officer, according to language of Sub-section (b) is obliged to issue notice to the person from whom the property is seized and duly bound to issue notice to the person who has interest in the property.

The submission of the learned Government Advocate that as they did not know that the petitioner was the owner, therefore, they were not required to issue notice to the owner, cannot be accepted. It would always be the duty of the

Forest Department before proceedings to confiscate the property to issue notice to all concerned. It would also be the duty of the Authority to inquire about ownership of the property so that the person having interest or interested in the property is issued a notice and is heard in accordance with the spirit of the Act.

Sub-section (5) of Section 52 of the Act provides that no order of confiscation under Sub-section (3) shall be made if any person referred in clause (b) of Sub-section (4) proves to the satisfaction of Forest Officer that the property was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects for commission of forest offence. When the law provides that notice has to be issued, so that the person whose property is under the threat of confiscation may prove that the property was used without his knowledge or connivance, then non-issuance of notice and non-grant of an opportunity to such person would certainly vitiate the order of confiscation.

The submission of the learned counsel for the State that the notice to the agent, i.e. driver Gokul Prasad was sent and he must have informed the party cannot be accepted. Clause (b) of Subsection (4) of Section 52 of the Act provides for notice to different persons and clearly provides that the notice shall be issued to the person from whom the property was seized and to the person who has some interest in such property. It does not say that notice to the driver or the person from whom the property seized would be sufficient notice to the master. Clause (b) of Sub-section (4) of Section 52, makes it clear that the owner may prove that the property was used without his knowledge or connivance, or, without knowledge or connivance of his servant. If the person fails to prove the absence of knowledge or connivance on the part of agent or servant he can still prove absence of knowledge and connivance on (his) part. Under these circumstances notice to servant or agent of the owner of the property is not sufficient notice to the owner of the property under Cl.(b) of Sub-section (4) of Section 52 of the Act.

The order Annexure C, so far as it relates to confiscation of the truck is concerned, is quashed but regarding confiscation of timber it is maintained. The petitioner is directed to appear before the Competent Authority on or before 28th April 1997 with a copy of this order. On production of the copy the Authority shall issue a fresh notice to the petitioner and shall decide the matter in accordance with law after providing reasonable opportunity of hearing to the petitioner.

The truck was released in favour of the petitioner by an interim order of this Court. Said order shall remain in force till final disposal of the inquiry to be conducted by the Competent Authority provided on or before 28th April 1997 the petitioner furnishes solvent surety in a sum of Rs. 1,00,000 (Rs. one lac only) to the satisfaction of the said authority that in the event the order goes against the petitioner he shall immediately surrender the truck or shall deposit the sum of Rs. 1,00,000/-. The petition to the extent indicated above is allowed. There shall be no orders as to the costs. Security amount, if any, be refunded to the petitioner after due verification.