

(1998) 03 PAT CK 0004
In the Patna High Court
Case No : Cr.W.J.C. No. 496 of 1991

M/s. J.B. and Company

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Forest Act, 1927 — Section 2(4), 27, 32, 52, 52

Citation : (1998) 2 PLJR 81

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Advocate : Braj Kishore Prasad, Chittaranjan Sinha, Sanjay Prasad and Amit Prakash, for the Appellant; J.P. Shukla and R.K. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—Petitioners in these cases have questioned the validity of the impugned notices whereby they were called upon by the Forest Authorities to show cause as to why their vehicles and Kendu leaves seized while transporting such leaves in contravention of the provisions of the Bihar Kendu Leaves (Control of Trade) Act, 1973 (hereinafter called "the Kendu Leaves Act"), be not confiscated. According to the Forest Authorities, at the time of checking, trucks of the petitioners were found carrying certain quantity of kendu leaves for which they had no valid permit. The contention of the petitioners is that any attempt of the forest authorities to confiscate the trucks taking aid of the provisions of Section 52 of the Indian Forest Act, 1927 (in short the "Forest Act") as substituted by the Bihar Amendment Act, 1989 for an offence under the Kendu Leaves Act will be illegal and without jurisdiction as no such provision has been made either under the Kendu Leaves Act or the rules prescribed thereunder. It was contended, when the alleged offences are specifically contained within the Kendu Leaves Act, there will be no scope for the authorities to apply the provisions of Section 52 of the Forest Act in order to confiscate the vehicles. Because the Kendu Leaves Act has been enacted to provide full control on

transaction of kendu leaves right from its collection or stripping from trees till its disposal to the consumers. True it is that Section 14 of the Kendu Leaves Act empowers the State authorities including Forest Officers to search and seize kendu leaves, boat, vehicles or receptacles used or intended to be used for transport of kendu leaves, but there is no provision to confiscate the vehicles etc. In support of the contention, petitioners placed reliance to a decision of this Court in the case of Smt. Chandrawali Devi vs. The State of Bihar and 2 ors., 1992 (1) PLJR 47 wherein it was held since transportation of kendu leaves is covered by a special enactment, therefore, for any violation of the Kendu Leaves Act, one has to take aid from the provisions made thereunder and not under the provisions of the Forest Act. Because as per section 21 of the Kendu Leaves Act, nothing contained in the Forest Act shall apply to Kendu Leaves in respect of the matters for which provisions are contained in that Act.

2. On the other hand, learned counsel for the respondents contended that Section 21 of the Kendu Leaves Act no doubt bars the application of the Forest Act, but only with regard to specified forest produce in respect of which provisions have been made under the said Act. As there is no provision for confiscation under the said Act, the forest authorities have ample jurisdiction to take steps for confiscation under the provisions of sections 52 of the Forest Act. It has been contended that Kendu Leaves Act only regulates the transit and other related matters of the specified forest produce whereas the Forest Act contains various provisions relating to transit of forest produce which are not contained under the special Act.

3. It was further contended that in case an order for confiscation of the vehicles is passed, the petitioner will have alternative remedy by way of appeal, therefore, no relief should be granted under the writ jurisdiction.

4. Solitary question thus relevant for consideration is whether in absence of specified provisions for confiscation of vehicles in the Kendu Leaves Act, the respondent authorities can take steps for confiscation of trucks under the provisions of section 52 of the Forest Act. Therefore, for proper appreciation of the rival contentions raised on behalf of the contesting parties, it would be apt to refer certain relevant provisions of the Kendu Leaves Act. As per section 2(d), "Kendu Leaves" means leaves of the plant known as "kendu". Section 2(g) defines "specified area" notified u/s 3 of the Act. As per section 2 (i), word and expressions used but not defined in this Act and defined in the Indian Forest Act, shall have the same meanings respectively assigned to them in that Act. Section 3 empowers the State Government for declaration of specified area and constitution of units, Section 5 imposes restrictions on purchase of transport of kendu leaves on the declaration of a specified area under the provisions of section 3. Section 14, deals with the power of entry, search, and seizure of the kendu leaves, boat, vehicles or receptacles used or intended to be used for transport of kendu leaves. It says that any Police Officer not below the rank of Assistant Sub-Inspector or any Forest Officer or any other person authorised by

the State Government, may with a view to secure full compliance of the provisions of this Act or the rules made thereunder can stop and search any person and vehicles as also to take steps for seizure in case of contravention of any of the provisions of the Act and Rules. Though it is not necessary for me to take note of oilier provisions of the Act in detail, but it will be appropriate to quote section 14 in extenso, as below :

"14. Power of entry, search, seizure, etc. -(1) Any Police Officer not below the rank of an Assistant Sub-Inspector or any Forest Officer or any other person authorised by the State Government may, with a view to securing compliance of the provisions of this Act or the rules made thereunder or satisfying himself that the said provisions have been complied with-

(i) stop and search any person, boat, vehicle or receptacles used or intended to be used for transport of kendu leaves;

(ii) enter and search any place and survey, demarcate and make a map of any land;

(iii) seize kendu leaves in respect of which he suspects that any provision of this Act or the rules made thereunder had been, is being or is about to be contravened, along with the receptacle containing such leaves, or the vehicles or boats used in carrying such leaves,

(iv) sell by public auction kendu leaves seized under clause (iii) and deposit the sale proceeds thereof in Government Treasury, if he is satisfied that the said kendu leaves are subject to speedy and natural decays;

Provided that the auction shall be conducted by a Forest Officer not below the rank of an Assistant Conservator of Forests.

(2) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1898 (V of 1898), relating to search and seizure shall, so far as may be, apply to search and seizure under this section.

5. Section 15 empowers a Forest Officer or any other officer, as may be authorised by the State Government to hold an inquiry into the offence relating to the contraventions of the provisions of the Act. Section 16 is a penalty section which provides modes of penalty including forfeiture of Kendu leaves by way of additional punishment to be awarded by the Court competent to try the offence under this Act. But there is no provision under this Act for the forfeiture or confiscation of the vehicles used for carrying kendu leaves.

6. A distinction was sought to be made by Mr. Prasad, Senior counsel appearing for the petitioners, with reference to a decision in the case of Smt. Chandrawati Devi vs. State of Bihar (supra) that kendu leaves not being "produce" of forest alone and can also be grown by the individuals on their raiyati lands and when the special enactment being "Kendu Leaves Act" had already been made to control the trade of "kendu leaves", the application of the Indian Forest Act is to

be excluded in view of the provisions of section 21 of the said Act. In these background, it would also be apt to quote section 21 of the Kendu Leaves Act as under :

"27. Indian Forest Act, 1927 not to apply to kendu leaves for purposes covered under Act. - Nothing contained in the Indian Forest Act, 1927 (No. 16 of 1927) shall apply to Kendu leaves in respect of matters for which provisions are contained in this Act."

7. The only question thus relevant for consideration is whether in absence of any provision for confiscation of vehicles in the Kendu Leaves Act, the authorities can apply the provisions of Sections 52 To 55 of the Forest Act, if such vehicles are found carrying kendu leaves in contravention of the provisions of the said Act. The relevant part of sub-section (3) of section 52 of the Forest Act as substituted by the Bihar Amendment reads as under :

"52. Seizure and its procedure for the property liable for confiscation.-

(1) x x x x

(2) x x x x

(3) Subject to sub-section (5), where the authorised officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorised confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle driver and the licence of the arms. A copy of order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the Forest-circle in which the forest produce, as the case may be, has been seized."

8. A plain reading of this section would show that Forest Officer can pass an order for confiscation in respect of forest produce and the vehicle, if he is satisfied that an offence has been committed in respect of the forest produce.

9. Under the Kendu Leaves Act, "kendu leaves" means leaves of the plant known as kendu. It has not been indicated whether kendu leaves are also forest produce. Section 2(4) of the Forest Act, which has been incorporated by the Central Act to consolidate the law relating to forest and forest produce etc., is as under :

(4) "Forest produce" includes-

(8) the following whether found in, or brought from a forest or not, that is to say :

timber, charcoal, caoutchouc, catechu wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, (kuth) and myrobalans; and

(b) the following when found in, or brought from, a forest, that is to say : -

(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones silk, cocoons, honey, and wax and all other parts or produce of animals, and

(iv) peat, surface soil, rock and minerals including limestone, laterite, mineral oils, and all products of mines or quarries)."

10. Undisputedly, from the aforesaid provisions, it would appear that leaves of trees grown in the notified area are forest produce. Though under the Kendu Leaves Act, kendu leaves means leaves of a plant of kendu but as per sub-section (i) of Section 2, words used under this Act but not defined will have the same meaning as defined under the Forest Act. Therefore, it will not be open to urge that simply because kendu plants can also be grown on a raiyati land, none of the provisions of Forest Act would apply. That apart, undisputedly, kendu leaves are also plucked from the notified forest land. But in fact, there is no provision for confiscation of the vehicles etc. by the authority under the Kendu Leaves Act. As such, the provisions of section 21 of the Kendu Leaves Act will not exclude the applicability of Section 52 of the Forest Act for confiscation of the vehicles. Because section 21 of the Kendu Leaves Act does not bar initiation and continuance of a confiscation proceeding under the Forest Act by the authorised officer with regard to the vehicles used for transporting kendu leaves in contravention of the provisions of the Act and rules framed thereunder.

11. Mr. Shukla, appearing for the respondents, also referred to a recent judgment in the case of Parveen Vs. State of Haryana, to show that the apex Court while examining identical provision of Section 22 of the M. P. Van Upaj (Vyapar Viniyaman) Adhiniyam, has held that proceeding u/s 52 of the Forest Act with regard to confiscation of the vehicles would be maintainable. Therefore, the law laid down by this Court in the case of Smt. Chandrawati Devi vs. State of Bihar (supra) is no longer a good law.

12. In our view, to find out whether the ratio laid down by the apex court in the said case can also be made available to the present case, it would be useful to quote section 22 of the M. P. Act from paragraph 5 of the said judgment in these words :

"Nothing contained in the Indian Forest Act, 1927 (No. 16 of 1927) shall apply to specified forest produce in respect of matters for which provisions are contained in this.

From a bare comparative study of the aforesaid provisions and that of section 21 of the Kendu Leaves Act, it would appear that both the provisions are identical. Under the M. P. Act also as would appear from the judgment of the apex Court, there was no provision for confiscation of the vehicles etc. nor there was any provision for release, as it is under the present Act. The apex Court, therefore, after examining the relevant provisions held since there was specific provision for confiscation of the vehicles etc. used for carrying of specified forest produce under the Forest Act, it was not necessary for the legislature to make an identical provision under the special Act. It would be useful to notice the relevant findings from the aforesaid report as under :

"7 x x x x

It is seen that the Act occupies the field in respect of the specified matters enumerated thereunder. In view of the fact that the Forest Act, as amended under the State Amendment Act 9 of 1965 has already occupied the field for confiscation of the vehicles etc. it is not necessary, again to provide the same procedure under the Act. In this behalf it is relevant to look into the procedure provided in the amendment Act 9 of 1965. Section 52 deals with the seizure of the property liable to confiscation and procedure thereunder. Section 52-A deals with the appeal against orders of confiscation. Section 52-B deals with revision before Court of Session against order of appellate authority, Section 53 gives power to the Forest Officer to release the seized property under certain circumstances enumerated thereunder. Thus, it could be seen that Ss 52 and 52A, as amended by the State Amendment Act 9 of 1965, having occupied the field in respect of the confiscation of vehicles etc. and the procedure thereunder, the Legislature had not expressly provided such procedure again for confiscation under the Act. The High Court, therefore, was clearly in error in coming to the conclusion that by operation of S. 22 of the Act the vehicle used for transportation of the specified forest produce in contravention of the Act has excluded the applicability of the provisions of the Forest Act, as amended by Act 9 of 1965 in respect of vehicle etc....

13. A reference can also be made to a recent judgment of this Court in the case of Raj Kumar Prasad, Gaukaran Prasad Singh and Others Vs. State of Bihar and Another, . In the said case also identical question with regard to Kendu Leaves Act as in the present case, was examined and having placed reliance on the judgment of the apex court in the case of Madhya Pradesh vs. Swaroopchandra (supra), it was held that confiscation proceeding initiated under the provisions of section 52 of the Forest Act for confiscation of the vehicle etc. was maintainable.

14. Reference in this regard can also be made to other decisions of this Court in the cases of Mohammad Akhtar and others vs. State of Bihar & others, 1996 (1) PLJR 77 and Baldeo Yadav vs. State of Bihar. 1996 (1) PLJR 698. In both the cases, vehicles were seized and confiscated under the provisions of Section 52 of the Forest Act. A question arose for consideration whether in view of the provisions of Section 52 of the Bihar Forest Produce (Regulation of Trade) Act,

1984 the provisions of the Forest Act were applicable to the offences under the said Act. Section 32 of the Act provides-

"Nothing contained in the Forest Act, 1927 (XVI of 1927) shall apply to specified forest produce in respect of matters for which provisions are contained in this Act."

Under the aforesaid Regulations of Trade Act. in fact there are only provisions regarding seizure and prosecution. No provision for confiscation unlike the Forest Act was made. It was. therefore held that Section 52 of the said Act would not stand in the way of the authorities to apply the provisions of Section 52 of the Forest Act for confiscation of the vehicles. Section 52 of the said Act and Section 21 of the Kendu Leaves Act are exactly same and identical.

15. Therefore, in my considered view, since Section 52 as substituted by the Bihar Amendment Act, having now occupied the field in respect of the confiscation of vehicles etc., and procedure thereunder, it may not be necessary to provide expressly such provision under the Kendu Leaves Act.

16. Turning to the alternative submission made on behalf of the petitioners that forest authorities had wrongly seized their kendu leaves and vehicles because for transpiration of the seized kendu leaves, valid permits were already granted by the forest authorities and none of the petitioners were carrying kendu leaves in excess to the quantity for which permits were duly granted, and in one of the cases, namely, CWJC No. 523 of 1991 (Mohammad Shah Jehan) though the car bearing registration No. DLJ 9924 was not engaged in transportation of kendu leaves but the authorities have arbitrarily seized the same without appreciating the actual state of affairs, in my view, such disputed facts cannot be examined by this Court while exercising writ jurisdiction at this stage. From a bare reference to the provisions enumerated under sections 52 to 55 of the Forest Act, it would appear that the petitioners have full opportunity to raise such questions before the competent authorities. It goes without saying that if on appreciation of the facts, as alleged by the petitioners, their grievance appears to be genuine, certainly the authorities will have no option but to drop the proceeding and release the kendu leaves including the vehicles. In the result, subject to the observations made above, all the writ applications are hereby dismissed but without any order as to costs.

I.P. Singh, J.

17. I agree.