

(1990) 09 OHC CK 0033
In the Orissa High Court
Case No : OJC No. 3265 of 1988

N.V. Gopalaswamy

APPELLANT

Vs

Assistant Conservator of Forests cum-Authorised Officer,
Nowrangpur Division and Another

RESPONDENT

Date of Decision : 11-09-1990

Acts Referred:

Orissa Forest Act, 1972 — Section 2
Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 2(1), 4, 5, 5(1), 7(8)

Citation : (1990) 2 OLR 400

Hon'ble Judges : B.L. Hansaria, C.J.; V. Gopalaswamy, J

Bench : Division Bench

Advocate : A.K. Misra and S.K. Das, for the Appellant; S.K. Das, Additional Government Advocate, for the Respondent

Judgement

B.L. Hansaria, C.J.—A vehicle bearing registration No. ORK 932 belonging to the Petitioner was seized on 17-8-1984 while the same was carrying green fire-wood. The seizure was on the ground that the fire-wood was being carried without the necessary transit permit as required by the Orissa Timber and Other Forest Produce Transit Rules, 1980 (hereinafter, "the Rules"). Subsequently, the vehicle was ordered to be confiscated by an order passed by the Authorised Officer-cum-Assistant Conservator of Forests. On appeal being preferred, the order of confiscation has been upheld. Hence this approach to this Court under Arts. 226 and 227 of the Constitution.

2. It is first submitted that the vehicle in question did not carry any green fire-wood. This being a pure question of fact and the learned District Judge having gone into the evidence, it is not open to this Court to reappraise the same and to hold that in fact the vehicle in question did not carry any green fire-wood on the relevant date.

3. The next submission is that carrying of fire-wood does not require any transit

permit. The basis of advancing this contention is that fire wood is not a "forest produce" according to the learned Counsel because of which no transit permit would be required as visualized by Rule 4 of the Rules inasmuch as under this rule a permit for transit by land, rail or water is required relating to all forest produces only. The expression "forest produce has not been defined in the Rules. But Section 2(g) of the Orissa Forest Act, 1972 (shortly, "the Act") contains such definition and is as below:

forest produce" includes

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

(a) timber, charcoal, cacutchouch, catechu, wood-oil, resin, natural varnish, bark, Tussar Cocoon, lac, gums, roots of Patal Garuda, mahua flowers, mahua seeds, myrabolams, kendu leaves, sandalwood, tamarind, hill-broom, sial leaves, sial fibres, sal seeds;

(b) wild animals and wild birds, skins, tusks, horns, bones and all other parts or produce of wild life; and

(c) such other produce as may be notified by the State Government; and

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

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

(b) plants not being trees (including grass, creepers, seeds and moss) and all parts or produce of such plants;

(c) honey, wax and arrowroot; (d) peat, surface of, rock, sand and minerals (Including limestone laterite, mineral oils and all products of mines or quarries);

The definition of "forest produce" as given in the aforesaid section shows two things. The first is that it is an inclusive definition and the second is that fire-wood has not been expressly mentioned either in Clause (i) or (ii) of the section. But then there would be nothing to doubt that fire-wood be included in what has been stated in Sub-clause (a) of Clause (ii) of the definition inasmuch as it states that this expression would cover all other parts of trees or produce of trees not hereinbefore mentioned. It is well known that fire-wood is a part of tree. We would, therefore, hold that firewood would be a forest produce even as per the definition given in Section 2(g) of the Act.

4. The above apart, there are provisions in the Rules to hold that fire-wood has to be regarded as forest produce for the purpose of obtaining transit permit visualised by Rule 4. We have said so because : (1) The expression "minor forest "produce" has been" defined in Rule 2(1)(h) of the Rules to mean "forest produce other than timber, fire-wood, charcoal and bamboos". This indicates that forest produce includes fire-wood. (2) While dealing with the question regarding cases in which permit shall not be required, Rule 5 states that no permit shall be

required to cover transit of forest produce, inter alia, in the case of fire-wood not exceeding one headload, vide Clause (h) of Sub-rule (1). This would first show that as per Rule 5 fire-wood is a forest produce, and secondly transit permit is necessary in those cases where the quantity to be transported is more than one headload. (3) Sub-rule (8) of Rule 7 under the heading "Application for permit and order thereon" shows that such an application is necessary for removal of fire-wood from private holdings indicating thereby that fire-wood would be forest produce inasmuch as Rule 4 of the Rules requires transit permit for transit of forest produce alone. This apart, a reference to the Schedule of Rate for Forest Produce in Orissa Rules, 1977 shows that rates have been provided for fire-wood also as per Schedule II-C which would indicate that as per these Rules fire-wood has been taken to be forest produce.

5. Because of all the above, we have no hesitation in concluding that fire-wood is a forest produce. The next question for examination is as to when transit permit is required to transport fire-wood from one place to another. Though Rule 4 of the Rules has been couched in wide language which would indicate as if transit permit would be needed whenever fire wood is sought to be transported by land; rail or water, it would seem that such permit would be needed only when transport is involved from forest area to areas located outside it. We have come to this conclusion for these reasons:

(1) The definition of fire-wood, as noted above as flowing from what has been stated in Sub-clause (a) of Clause (ii) of Section 2(g) of the Act, would show that fire-wood would be a "forest produce" when it is found in or brought from a forest. This shows that fire-wood would be a forest produce for the purpose of transit permit only when it is being brought from a forest.

(2) Rule 5(1)(h) of the Rules has stated that no transit permit shall be required in case of fire-wood if the same does not exceed one head-load. This would indicate that carrying of head-load of fire-wood from forest was in mind of the rule-making authority. This transport could not have been from places outside the forest area.

(3) It is common knowledge that when fire-wood is purchased from market for domestic purpose and the same is transported from the market to one's house, no transit permit is required. Indeed, Rule 5(1)(e) of the Rules exempts from the requirement of obtaining transit permit in some cases where the forest produce is needed for bona fide "domestic use."

6. In this connection Mr. Misra has brought to our notice a judgment of this Court in *Pedina Baikuntham v. State of Orissa* O.J.C. No. 1519 of 1980 disposed of on 8-12-1980) wherein it was observed that question of obtaining timber transit permit arises only when transport is involved from the forest area to areas located outside it.

7. May it be also noted that in *Narendra Singh v Authorised Officer* (O.J.C. No. 3015 of 1988 disposed of on 15-11-1988) the Petitioner was found guilty for

having committed forest offence in case of transportation of fire-wood where the same was from the Development protected forest.

8. This being the position, there is sufficient force in the contention of Mr. Misra that no forest offence was committed in the present case inasmuch as the truck in question was seized while the same was near bazar area because of which it could not be known as to whether the fire-wood was being transported from any forest area to areas located outside it. The confiscation proceeding has, therefore, to fail on this count.

9. Having come to this conclusion, it is not necessary to further examine the question whether the present is a fit case for confiscating the vehicle valued at more than rupees one Lakh for transporting of a truckload of fire-wood. It may, however be pointed out that in similar circumstances this Court in Narendra Singh (supra) after referring to a Bench decision of this Court in State of Orissa Vs. Santosh Kumar Behera and Others, had set aside the order of confiscation and instead awarded a fine of Rs. 7,500/- on the owner who in that case had transported one truck-load of fire-wood from the Government protected forest.