

(2003) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3794 of 2002

Sahiblal and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

Forest Act, 1927 — Section 41, 42

Citation : (2003) 4 MPLJ 587

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Mukhtar Ahmed, for the Appellant; Sanjay K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in the instant petition has prayed for quashing the Order P/6 dated 4-7-2002 passed by D.F.O. (South Territorial Division) Balaghat and instructions P/10 issued on 25-8-2001 by Chief Conservator of Forest, (Production) M.P. Bhopal pursuant to the directions made by the Apex Court as per order dated 17-12-1999.

The petitioners submit that the order P/6 is violation of the Rule 4(B)(2) of M.P. Transit (Forest Produce) Rules 2000. Petitioners submit that they are the Bhumiswamis of certain agricultural land situated at Hatta Tehsil and District Balaghat. The land is situated within the Gram Panchayat Khursodi. Petitioner have growing trees of Babul, Heewar, Ber Kasai, Siris (Keenhi), Palas Baheda on their agricultural land. The said trees are not prohibited to be felled and cut. There is no provision in notification P/3 issued on 24-5-2002. The M.P. Transit (Forest Produce) Rules 2000 in exercise of the powers conferred u/s 76 read with sections 41 and 42 of Indian Forest Act 1927 for the purpose of regulating the transport of forest produce. Under Rule 4(B)(1) no transit passes are required to

transport the timber and fuel of Neelgiri, Casuarina, Subabul, Poplas, Israil Babul, Vilayati Babul.

Transit passes are required for kind of cutting the trees mentioned in Rule 4(B)(2) (a), which shall be issued by Panchayat according to the recommendation of the Panchayat Level Committee. These trees are Babul, Siris, Neem, Ber, Palas, Jamun, Reunjha and Bamboo [except in the certain districts as mentioned in the Rule 4(B)(2)(a)(viii)]. Rule 4(B)(2)(b) of the Rules provides transit pass for timber/fuel of all the species other than those mentioned under 4(B)(1) and 4(B)(2)(a), shall be issued by the Forest Officer, authorised by the D.F.O. after considering the recommendation of the Panchayat Level Committee. The earlier word used in Rule 4(B)(2)(b) were "according to the recommendation". Now, these words have been substituted with "considering the recommendation". This amendment has been effected on 19th October 2001 by amending the rules. Petitioners submit that when they approached to Gram Panchayat, Khursodi and the Gram Panchayat Samanapur, they were informed that the D.F.O. South Territorial Division Balaghat has taken away the power of the Gram Panchayat under the rules. The petitioners thereafter approached the local M.L.A. for agitating their grievance before the D.F.O. as per communication P/6 dated 4-2-2002, addressed to the M.L.A. certain facts are mentioned on the basis of which petitioners submit that power of Gram Panchayat has been taken away. The petitioners further submit that Forest Officers in Balaghat District have assumed the powers of the Panchayat and are issuing the transit passes to the Bhumi Swamis with regard to the Timber and Fuel of Keenhi and Babul species. Petitioners further submit that Rule 4(D) of M.P. Transit (Forest Produce) Rules 2000, the transit pass shall be issued within 45 days of the application on the basis of recommendation made by Panchayat Level Committee. There is no discretion left to the forest officers to refuse the issuance of transit pass on expiry of 45 days. The Conservator of Forest has issued an order P/10 dated 25-8-2001 conferring discretion on the issue of transit pass, which is contrary to the spirit and object of M.P. Transit (Forest Produce) Rules 2000. Thus, the writ petition has been preferred for quashment of communication P/6 and directions contained in P/10.

In return filed by the respondents, it is contended that Rule 4(B)(2)(b) has been amended on 19th October, 2001 and power is given to "consider the recommendation" to the forest authorities with respect to issue of transit pass for cutting of timber/fuel of all the species other than those mentioned under Rule 4(B)(1) and Rule 4(B)(2)(a). After the amendment of the Rules, the recommendation of Panchayat Level Committee are not binding under Rule 4(B)(2)(b) consideration has to be made in objective manner by the D.F.O. After publication of the aforesaid Rules a public notice was issued informing publicly various Gram Panchayats about the powers to exercise by them under the M.P. Transit (Forest Produce) Rules 2000. Public notice was issued. In response to notice, 61 Gram Panchayats had applied for issuance of transit pass book and hammer and no such application was preferred by Gram Panchayat, Khursodi.

Since Panchayat has not applied for transit pass, petitioner has no cause of action. Public notice R/3 mentions that transit pass book has to be issued on payment of prescribed fee of Rs. 100/- to Panchayat concerned.

Shri M. Ahmed, learned counsel appearing for the petitioner has submitted that communication P/6 is repugnant to the Rules and also the order P/10. It is also submitted that for certain categories of trees which are standing on the land of the petitioners no permission is required. Thus, the action is bad in law.

Shri Sanjay K. Agrawal, learned P.L. appearing for the respondents has submitted that petitioners have not come up to the any specific case. In any case, after amendment has been incorporated in the rules, it is not open to obtain transit pass on expiry of 45 days as a right for the category of trees mentioned in Rule 4(B)(2)(b). The effect has to be given of deletion of word "according to the recommendation" and its substitution by "considering the recommendation" which means that the recommendation of Panchayat is not binding with respect to the kind of trees which are included in Rule 4(B)(2)(b). He further submits that instructions contained in P/10 have been issued pursuant to the direction of the Supreme Court.

For examining, submission raised by the petitioners nature of the communication P/6 address to the M.L.A. has to be considered. The applications dated 25-4-2002 and 7-6-2002 filed by Sahiblal s/o Hiralal were considered and it has been observed in general that though the transit passes were issued in some of the cases but the permission of cutting the tree which was necessary as per Land Revenue Code and the provisions of Forest Act was not possessed by the incumbents who were transporting the trees. Panchayats were required to issue transit passes only with respect to those trees with respect of which permission to fell has been granted. The observation is to be understood with respect to kind of trees for felling of which permission is necessary.

Petitioners have not filed the applications which were submitted on 25-4-2002 and 7-6-2002. It is not clear that petitioners had applied with respect to which of the trees whether those trees fall under Rule or 4(B)(2)(a) or under Rules 4(B)(2)(b). In case as a pleading also suggest that instructions are contrary to Rule 4(B)(2)(b), in my opinion when the amendment has been effected in the rules with respect to trees contemplated in Rule 4(B)(2)(b), D.F.Os. are the final authorities and Panchayat Level Committee recommendations are not binding. Full effect has to be given to deletion of words "according to recommendations" and insertion of "considering the recommendations".

However, issue of blanket direction to take back the transit pass books from all the Panchayats cannot be said to be a proper direction as contained in P/6. The Panchayat, Khursodi where the trees of the petitioner are standing has not applied for issue of transit passes.

The instructions contained in P/10 are based on the direction issued by the Apex Court and are not shown to be illegal in any manner or beyond the directions

issued by the Apex Court.

It does not appear that in P/6 the case of the petitioner is dealt with the specific kind of trees which petitioner wanted to cut and location has not been taken into consideration whether they are in forest or outside. In case petitioners file appropriate application before the concerned forest authority/Panchayat the same has to be considered in accordance with Rules.

With the aforesaid observations, writ petition is dismissed.