
(1996) 01 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 8891 of 1994

Sanjaya Kumar Gadodia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-01-1996

Acts Referred:

Orissa (Mahua Flower) Rules, 1974 — Rule 11, 6 , 7, 8

Citation : (1996) 81 CLT 498 : (1996) 1 OLR 366

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; R.K. Dash, J

Bench : Division Bench

Advocate : Milan Kanungo, L. Kanungo, S. Das and D. Pradhan, for the Appellant; Addl. Standing Counsel, for the Respondent

Judgement

R.K. Dash, J.—The short and simple question for determination in the present writ application is whether the Collector and Excise authorities of Sundargarh district have powers under the Orissa (Mahua Flower) Rules, 1974 (for short "the Rules") to levy and collect fees for inter-district movement of Mahua flowers.

2. Petitioner's case in short, is that although on the strength of a valid permit he has been procuring Mahua flowers from within the district of Sundargarh and transporting the same to his depot at Rajgangpur which is within the very same district for storage, for such transportation the Collector and Excise authorities have been illegally levying and collecting fees when rules do not permit them to do so. Challenging such action of the authorities he had approached this Court by filing OJC No. 5494 of 1994 which was ultimately dismissed as withdrawn. This is the second writ application he has filed praying that it be declared that imposition of fees for transportation of Mahua flowers can only be made in the case of inter-district and not intra-district movement and upon such declaration, it be ordered that the fees already collected by the authorities be refunded to him.

3. The Superintendent of Excise, opp. party No. 2 in his counter while denying the petitioner's allegations, has urged inter alia, that in view of amendment of

Rule 11 of the Rules coupled with Government of Orissa, Revenue and Excise Department notification No. 1903/R dated 6-12-1989 and Board of Revenue notification No. 35/Ex. dated 3-1-1990, the petitioner is liable to pay fees for intra-district transport of Mahua flowers and accordingly the same is being collected from him for which he cannot have any grievance.

4. Rules 6 to 8 of the Rules prescribe the procedure regarding the import of Mahua flowers from outside the State. As provided therein, on application being made the Collector after conducting enquiry and satisfying himself as to the bonafides of the applicant, may direct the Superintendent to issue a permit authorising him to import Mahua flowers. A look at Rule 8 indicates that a permit-holder shall strictly comply with the conditions of permit relating to movement of Mahua flowers during transit and storage in the authorised place. It also further provides that after consignment of Mahua flowers is brought to the district, a copy of the permit shall be presented to the Superintendent or such other Officer as may be authorised by him to check and verify the consignment. The Superintendent or the Authorised Officer can also check and verify the consignment at the premises where it is stored. Observance of these provisions has been made applicable with regard to the transport of Mahua flowers inside the State by bringing out amendment in Rule 11 of the Rules. Earlier to amendment, Rule 11 provided that there shall be no restriction for transport of Mahua flowers inside the State. But by amendment the said Rule has been substituted under the Government of Orissa, Revenue and Excise Department notification No. 1903/R dated 6-12-1989 which reads as follows :

"11. Rules 6 to 8 relating to import of Mahua flower from any place out-side the State shall mutatis mutandis apply to the transport of Mahua flower inside the State and for issue of transport permit."

A bare reading of the aforesaid amended rule shows that Rules 6 to 8 have been made applicable for transport of Mahua flowers from one district to another and not for transport made within the district. If at all it was the intention of the State Government to put restriction on the transportation of Mahua flowers inside the district, in that case instead of using the word "State" as mentioned in Rule 11 the word "district" should have been used. Our such observation gains support from the State Government's D. O. letter No. 1919 dated 8-12-1989 (Annexure-4) where restriction imposed on transport of Mahua flowers under the amended Rule 11 has been confined to the inter-district movement. So, on a reading of the amended Rule 11 coupled with Annexure-4, we are of the considered view that restriction imposed by the State Government with regard to transport of Mahua flowers inside the State is meant for inter-district and not intra-district transport.

5. In view of our conclusion and findings as aforesaid, we allow the writ application and declare that imposition of transport fees on the intra-district movement of Mahua flowers is illegal being contrary to Rule 11 of the Rules. However, we are not inclined to allow the amount already collected by the opp.

parties 1 and 2 towards transport fees. The prayer is rejected.

In the circumstances, there shall be no order as to costs.

D.P. Mohapatra, A.C.J.

I agree.