

**(1993) 12 OHC CK 0014**  
**In the Orissa High Court**  
**Case No : 0.J.C. No. 4447 of 1992**

Sudarsan Palai and Others

APPELLANT

Vs

Divisional Forest Officer and Others

RESPONDENT

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**Date of Decision :** 14-12-1993

**Acts Referred:**

Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 7(8)

**Citation :** (1994) 1 OLR 250

**Hon'ble Judges :** R.K. Patra, J;L. Rath, J

**Bench :** Division Bench

**Advocate :** R.C. Rath, for the Appellant; Dabasis Das, AGA, for the Respondent

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## Judgement

L. Rath, J.—The occasion for moving this application under Arts. 226 and 227 of the Constitution of India, by the petitioners was the inaction of the opp. parties in issuing the permit under the Orissa Timber and Other Forest Produce Transit Rules, 1980 (hereinafter referred to as "the Rules") to enable them to remove timber from their land. The facts which constituted the cause of action for the petitioners are that they purchased the land on which the trees stood on 5-7-1974 and filed an application before the Divisional Forest Officer (opp. party No. 1) in Form No. III of the Rules on 29-8-1987 in pursuance of which the opp. party No. 1 gave a direction on 7-5-1988 to the Range Officer, Balukhenda to make a joint verification. The joint verification was made on 3-12-1988 but since nothing happened thereafter the petitioners made an application on 12-9-1991 to the Secretary to the Government, Forest Department. Since no results were coming forth even then, the present application was filed on 22-6-1992. In the counter affidavit filed in pursuance of the rule issued, it was the averments of the opp. parties that on 7-5-1988 the opp. party No. 1 instructed the Range Officer to make the joint verification. As the joint verification report did not contain details of measurement nor specified any fixed point of measurement, the opp. party No. 1 on 31-10-1988 directed a test check to be made. But in fact no test check was done and there were correspondences between the Tahsil office and

the forest officials from time to time in the matter and as the test check has not been made, the permit had not been issued. It is submitted by the learned counsel for the petitioners that the test check was conducted during pendency of the writ application and in pursuance of our order passed on 9-4-1993, the permit has since been issued in favour of the petitioners. From the narration of the facts it would be seen that though the application for issue of permit was made on 29-8-1987, about nine months elapsed before the Divisional Forest Officer acted on the application and directed the Range Officer to make the joint verification. Five months after that the joint verification was taken up. Till three years thereafter no action was taken for which the petitioners made a representation to the Government on 12-9-1991. The facts stated in the counter affidavit show that even though the petitioners had no fault and had committed no laches and they wanted the removal of trees from their own land, yet only because of the gross inaction of the opp. parties and the endless correspondences made trying to find fault with each other, the petitioners were not issued with the permit. Since a large number of cases are instituted in this Court with similar complaint regarding issue of permit under the Rules and the facts disclose that even though the Rules contemplate issue of the permit at the earliest, yet such objective is not kept in view and instead the question of issue of permit is attended to in grossly leisurely manner putting the applicants to much jeopardy. Dealing with similar situation, observation was made in *Md. Umar Vs. State of Orissa and Others*, as follows :

"The provisions of the rules show that the Divisional Forest Officer is under an obligation to grant the transit permit free of cost subject to an enquiry held in accordance with the prescribed manner. The timber is the property of the applicant and he is free to move it according to his necessity but such movement is made subject to the conditions imposed under the rules. The very purpose of the rule and of the enquiry before the transit permit is granted, is apparently to make sure that the timber sought to be removed is private timber and not timber or bamboo clandestinely removed from the Government forests. The Rules are thus provisions for protection of the Government forests and is justifiable as such. The rules are never contemplated to be utilised as a means of oppression of the owners of the timber so as to keep it hanging like a Damocles's sword over them ready to fall at the slightest ill humour. Grant of permit under the rules must be attended with reasonable speed and the procedural delay must not be of such proportion and magnitude so as to stall the grant of permit for years together, It may often be the case due to such arbitrary action, that a person, who has contracted to sell timber to third parties and commercial commitments on such contract has taken place, finds himself in an unenviable position of being saddled with heavy liabilities for the contract having become frustrated due to the mere non-issue of the permit."

Since it was noticed that even after the decision, no improvement has occurred, we directed to State by our order No. 6 dated 1-2-1993 to file a scheme to alleviate similar complaint made in a large number of cases for issue of timber

transit permit with a view that the applications should be disposed of in a time-bound manner. In pursuance of our order, the State filed a scheme, but since it was found to be not actually in compliance with the undertaking of the learned Additional Government Advocate, a second scheme was filed on 23-8-1993. A copy of the scheme was supplied to the learned counsel for the petitioners and indepth consideration was taken up on different dates. On the basis of such considerations an agreed scheme has been evolved which is being made part of the judgment. We have been assured by the learned Additional Government Advocate that the scheme as has been evolved has also been agreed to by the State.

2. In that view of the matter, we dispose of this writ application with the directions that the conditions as are stated in the scheme appended to the judgment shall hereafter be scrupulously followed and complied with in disposal of all applications made for issue of permit for removal of timber and other forest produce under the Rules. Copies of the judgment along with the appendix shall be communicated to the Secretaries to the Government in the Forest and Revenue Department, Orissa, Bhubaneswar for necessary compliance, The State Government shall circulate copies of the scheme with the necessary forwarding to all authorities under the Orissa Forest Act and the Orissa Timber and Other Forest Produce Transit Rules forthwith for their taking action accordingly. The writ in the case be issued forthwith.

R.K. Patra, J.

I agree.

Writ application disposed of.

OJC No. 4447 of 1992 SCHEME FOR REMOVAL OF TIMBER, FIREWOOD AND BAMBOOS FROM PRIVATE HOLDINGS

1. Person desiring to remove forest produce under Sub-rule (8) of Rule 7 of the Orissa Timber and Other Forest Produce Transit Rules, 1980 shall apply (in duplicate) for transit permit in form No. III to the Divisional Forest Officer hereinafter referred to as "the D. F. O.") having jurisdiction.

2. On receipt of such application the D. F. O. shall scrutinise it and send one copy thereof to the concerned Tahsildar within 15 days of such receipt for joint verification in the field.

3. On receipt of copy of such application from the D. F. O., the Tahsildar shall examine the matter with reference to the records and intimate to the D. F. O. not later than 15 days of such receipt authorising any officer not below the rank of Revenue Supervisor, if the Tahsildar himself cannot participate in the joint verification to attend the joint verification.

4. On receipt of intimation from the Tahsildar, the D. F. O. shall take steps for joint verification by the Forest and the Revenue Departments. The D.F.O. or the

Assistant Conservator of Forests duly authorised in that behalf shall take up joint verification. The applicant shall bear the Amin fees, if any, for requisitioning the services of Amin from the office of Tahsildar for the purpose of joint verification. The exercise of joint verification includes complete chaining and verification of plots. If the application relates to bamboos, joint verification shall include complete verification of such bamboos (counting of existing bamboos). In respect of trees, joint verification shall include quantity of expected converted timber besides identification of species, diameter. In respect of firewood joint verification shall include estimation of firewood from lops and tops. A detailed enumeration list in triplicate and a map of the surveyed area shall be appended to the joint verification. Joint verification by the Revenue and Forest officials and enumeration of the trees and bamboos as mentioned in the application for transit permit shall be completed and communicated to the applicant within 60 days from the date of receipt of report from Tahsildar.

5. In case of any discrepancy found in the joint verification report, the D. F. O. shall make specific order indicating reasons and shall intimate the same to the applicant within the same" period as mentioned in paragraph-4 above, who shall remove the discrepancy within 15 days on receipt of the order.

6. On receiving the intimation of removal of discrepancy from the applicant or, as the case may be, the joint verification report showing no discrepancy, the D. F. O., if he considers expedient, may have a test check either by himself or through the A. C. F., after obtaining necessary orders in that regard from the concerned Conservator of Forests. The test check, if any, shall be completed within thirty days from the date of receipt of the intimation from the applicant or the no discrepancy joint verification report. If the test check is not completed within the stipulated period, it shall be deemed to have been done with no discrepancy found.

7. Within ten days of completion of the joint verification or of the test check, if any, made, the D. F. O. shall direct, if no discrepancy is noticed in the field, the applicant to register his property hammer mark with him on deposit of the required fees which shall be done within ten days.

8. The applicant shall thereafter submit a list of conversion of trees and bamboos felled and converted by him over the plots in triplicate and put the fascimile of the registered property mark on either ends of all timber including round wood billets.

9. The D. F. O. shall thereafter get the timber including round wood billets branded with the Forest Department hammer mark bearing letters "P. T." within 15 days.

10. The applicant thereafter shall submit within a week a list in triplicate specifying the number, species, size of timber and/or quantity of firewood and/or quantity of other forest produce proposed to be removed. Within ten days of receipt of the documents, the D. F. O. or the A. C. F. authorised in that behalf, as

the case may be, shall, after proper verification of the documents allow removal of the timber firewood/other forest produce by issue of the required T.T. permit.

11. One day before the actual removal of timber /firewood/other forest produce, the applicant shall inform in writing to the permit granting authority the vehicle number and the route in which the removal is to be made.