

Dilip Kumar Sharma Alias Dilip Sharma Vs. Divisional Forest Officer and ors.

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Court : Patna

Decided On : Feb-06-1998

Judge : S.K. Chattopadhyaya, J.

Appeal No. : Cr.W.J.C. No. 201 of 1997 (R)

Appellant : Dilip Kumar Sharma Alias Dilip Sharma

Respondent : Divisional Forest Officer and ors.

Advocate for Pet/Ap. : Mr. V. Shivnath

Disposition : Application Allowed

Prior history : S.K. Chattopadhyaya, J. 1. Heard Mr. V. Shivnath, learned Counsel for the petitioner and Mr. P.D. Agrawal, learned G.A. on behalf of the respondents/State. 2. Pursuant to orders dated 7.1.1998 and 28.1.1998 respondent No. 2, Mr. Sanjay Kumar, Divisional Forest Officer, North Division, Garhwa, is present in Court. Records of Confiscation Case No. 4/97-98 have also been produced before me for my perusal. 3. In this writ application the petitioner has made a grievance that although the earst-whil

Judgement :

S.K. Chattopadhyaya, J.

1. Heard Mr. V. Shivnath, learned Counsel for the petitioner and Mr. P.D. Agrawal, learned G.A. on behalf of the respondents/State.

2. Pursuant to orders dated 7.1.1998 and 28.1.1998 respondent No. 2, Mr. Sanjay Kumar, Divisional Forest Officer, North Division, Garhwa, is present in Court. Records of Confiscation Case No. 4/97-98 have also been produced before me for my perusal.

3. In this writ application the petitioner has made a grievance that although the erstwhile D.F.O. of Garhwa, after considering the allegations made against the petitioner, directed release of the vehicle by this order dated 23.9.1997 subject to certain conditions, the present respondent No. 2, on assuming charge on 24.9.1997, refused to abide by the said order of his predecessor and even though in compliance of the order dated 23.9.1997 the petitioner filed bond of Rupees five lacs and other documents, the same were not entertained and subsequently on 30.9.1997, without any rhyme and reason, recalled the order dated 23.9.1997 and rejected the prayer of release of the vehicle. Second grievance is that when the petitioner found that the present D.F.O. has acted with illegality, he just by way of information approached the Deputy Commissioner, being the appellate authority, ventilating his grievances against respondent No. 2. It is alleged that on such petition being filed, a Misc. case was registered and the Deputy Commissioner though asked respondent No. 2 to send the concerned records to him, the said order was not complied with and instead, the D.F.O. informed the Deputy Commissioner that as because the confiscation proceeding was pending, the appeal before the Deputy Commissioner was not maintainable. With these grievances the petitioner has approached this Court for a direction to respondent No. 2 to release the vehicle by setting aside the order dated 30.9.1997.

4. It appears that the vehicle of the petitioner bearing registration No. BRO 7121 was seized for transporting 2000 CFT stones and subsequently confiscation proceeding was initiated. There is no denial of the fact that during the pendency of the confiscation proceeding the petitioner prayed before the D.F.O. for release of the vehicle on the ground mentioned therein. The predecessor of the present respondent No. 2, by his order dated 23.9.1997, ordered for release of the vehicle

on certain conditions one of which was to execute bond to the tune of rupees five lacs. Other conditions were also imposed with which we are not concerned at present. The then D.F.O. Rakesh Kumar, was transferred and the present incumbent, Sanjay Kumar took charge on 24.9.1997 and now he is in seisin of the said confiscation proceeding No. 4/97-98. It is alleged that pursuant to order dated 23.9.1997 when the petitioner went to submit documents of security etc. on 24.9.1997 the respondent No. 2 did not accept the same and returned those documents and papers of security to the petitioner with a note that the documents are not needed by the Court.

5. It is the specific case of the petitioner that though he made an application for the certified copy of the entire orders-sheet of the concerned confiscation case but the same was not supplied till the filing of the writ application. Apprehending that the petitioner would not get any justice in the hands of the present D.F.O. He approached the Deputy Commissioner by way of information regarding the conduct of respondent No. 2 and, as stated above, a Misc. case was registered. The Deputy Commissioner directed the D.F.O. on 27.10.1997 to forward the records of the said case to him but instead of sending the same, by letter dated 1.11.1997 the D.F.O. informed the Deputy Commissioner to the effect that since confiscation proceeding is pending for final disposal, the petition filed by the petitioner before the Deputy Commissioner was not maintainable. This letter by Sanjay Kumar dated 1.11.1997 is Annexure-10 to the writ application.

6. Subsequently it appears that by the impugned order dated 30.7.1997 the present D.F.O. reviewed the order passed by his predecessor on 23.9.1997 and rejected the prayer of release of the vehicle. It is to be mentioned here that though the present D.F.O. was noticed to show cause but the first counter affidavit was filed by one Raj Kumar Sah, Assistant Conservator of forest, who was said to have been authorised by the other respondents to swear the same. Though by order dated 7.1.1998 while issuing notice to respondent No. 2, I directed him to swear the affidavit personally, but it appears that in total disregard of that direction the counter affidavit was sworn by aforesaid Raj Kumar Sah. In para 14 of the first counter affidavit, filed on 20.1.1998 it has been stated that the petitioner has withdrawn the petition for releasing the truck and release of the truck was opposed

by the Government Pleader on the ground that the petitioner primarily accepted the commission of the offence and the fact that there is no provision in the Indian Forest Act, 1927 (Bihar Amendment 1990) to release the vehicle seized under Section 52 of bond. The authorised officer, Sanjay Kumar (respondent. No. 2) on 30.9.1997 amended the said order dated 23.9.1997 directing that the same will not be released on bond and shall be dealt with according to the final order in the Court of the authorised officer. The order dated 30.9.1997 has been annexed as Annexure 'H' to the counter affidavit.

7. Subsequently, it appears that realising his fault, respondent No. 2 has filed another affidavit sworn personally by him on 27.1.1998. In para 5 of this affidavit he has adopted the counter affidavit filed earlier on behalf of the respondents. In para 11(a) it is asserted that on 1.9.1997 the petitioner through his lawyer withdrew the plea of releasing the truck on bond. In this affidavit Mr. Sanjay Kumar has again reiterated that Section 53 of the Indian Forest Act, 1927 does not provide for release of vehicles seized under Section 52 of the Act on bond. According to him he informed the Deputy Commissioner that in view of the pendency of the confiscation proceeding the appeal filed by the petitioner before him was not maintainable and the Deputy Commissioner accepted his contention and directed the petitioner to cooperate with the authorised officer in the said case.

8. In this context the first question which is to be answered is as to whether Rakesh Kumar, the predecessor of respondent No. 2 had any authority under the law to pass order releasing the vehicle during the pendency of the confiscation proceeding or not. The law in this regard is well settled by this Court in the case of Maqbool Ansari v. State of Bihar and Anr., reported in 1995 (2) East Cr. C. 447, where this Court had held that during the pendency of the confiscation proceeding the D.F.O. is competent to order release of vehicles. This single Bench decision was affirmed later on by a Division Bench of this Court in the case of Mumtaz Ahmad v. State of Bihar and Ors. reported in 1995 (2) East Cr. C. 586, where agreeing with the single Bench decision it was held that the authorised officer is competent to release the articles seized under Section 52 of the Act subject to result of the confiscation proceeding at any time during pendency of the confiscation proceeding before him. This will clearly indicate that Rakesh Kumar

was well within his jurisdiction to release the vehicle on 23.9.1997 on certain conditions.

9. Thus, it appears that respondent No. 2 is totally unaware of not only the provisions of law but also the decisions of this Court. When I inquired from him about the provisions of law, he with a courage, submitted that he is not aware of such law. It is really unfortunate that the D.F.O. who is holding such a responsible post, is not aware of the decisions of the High Court or the Apex Court and the provisions of law.

10. The next question which has to be answered is as to whether respondent No. 2 was empowered under the law to review the order of his predecessor or not. It is not in dispute that neither the Indian Forest Act, 1927 nor its Bihar Amendment 1990 provides for a review of an order passed by the predecessor. It is well settled that power of review is a creation of Statute and in absence of such provision in Statute, the same cannot be exercised inasmuch as the said power is not inherent power. Reference in this connection may be made to the case of Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunshinghji reported in : AIR 1970 SC1273 .

11. Even assuming for the time being that Mr. Rakesh Kumar, D.F.O. had no authority under law to pass an order for release of the vehicle, the said order could have been challenged on that ground before an appropriate forum on behalf of the State. Admittedly, that has not been done. Respondent No. 2 with over jealous sat over the order of his predecessor and reviewed the same by rejecting the prayer of the petitioner to release the vehicle. In my considered opinion respondent No. 2 has exceeded his jurisdiction by doing so. The law does not permit him to review the order even if it was illegal and contrary to the interest of the State for which respondent No. 2 boldly submits, he is more conscious.

12. The respondent No. 2, in his counter affidavit, has taken a plea that on 1.9.1997 the petitioner withdrew his prayer of release of the truck. In this connection the order dated 23.9.1997 passed by his predecessor may be looked into. It appears that the then D.F.O. took into consideration that submission of the petitioner that on 1.9.1997 he did not press his petition for release dated 13.8.1997

but that does not mean that the prayer for release was abandoned. Mr. Rakesh Kumar (the then D.F.O.), considering the letter of the Deputy Commissioner, Garhwa bearing No. 365 dated 18.9.1997 and other documents of the Mining Department, passed order for release. Under these circumstances, the submission of respondent No. 2 that the petitioner withdrew his prayer for release of the vehicle, is not sustainable. It shows how respondent No. 2 has scrutinised the records of the confiscation case and appreciated the order of his predecessor dated 23.9.1997.

13. Now I come to the grievance made by the petitioner that though he applied for the certified copies of the entire order-sheet, the same was not supplied to him till filing of the writ application. This statement has been categorically made in para 28 of the writ application. In support of his contention the petitioner has annexed the 'Adhkatti' as Annexure-9 which reveals that the certified copy of the entire records and order-sheets from 16.9.1997 to 24.9.1997 was applied for. In para 31 of the counter affidavit sworn by Raj Kumar Sah on behalf of respondent No. 2, it is stated in reply to the statement made in para 28 of the writ application that the petitioner applied for the certified copies of the complete offence report, counter affidavit of the opposite party and complete order-sheet and all those have been given to the petitioner in the aforesaid case. To substantiate this, a note-sheet dated 15.9.1997 has been annexed as Annexure 'Q'. From a bare perusal of Annexure 'Q' it appears that the same was in respect of application No. 206 dated 2.9.1997 and 207 dated 3.9.1997 which has no relevancy with Annexure-9 which is dated 27.10.1997. The respondent No. 2 in this counter affidavit has failed to explain as to why the certified copies of the documents applied for by the petitioner on 27.10.1997 were not supplied to him. Instead of explaining, Mr. Raj Kumar Sah, Asstt. Conservator of Forests, by annexing an office note as Annexure 'Q', has tried to mislead this Court by trying to prove that the petitioner is a liar. Only for this misleading averments made by the respondents, he can be proceeded with appropriately but taking into consideration the service career of a young D.F.O. Officer I restrain myself from passing any drastic order so that his career may not be put in jeopardy. But it is expected that in future Mr. Sanjay Kumar will try to abide by the laws of the land and the interpretations given to it by the Courts of law.

14. Having discussed the matter in detail I am of the view that the impugned order dated 30.9.1997 cannot be sustained in law. As already indicated above, since the present D.F.O. had no authority in law to review the order dated 23.9.1997 passed by his predecessor, the order dated 23.9.1997 stands and respondent No. 2 is directed to release the vehicle of the petitioner forthwith on the terms and conditions already imposed in the order dated 23.9.1997.

15. In the result, this application is allowed. The impugned order dated 30.9.1997 is hereby quashed.

16. After the order was directed in Court, Mr. V. Shivnath, learned Counsel for the petitioner, has made an oral prayer to transfer the confiscation proceeding pending before the present D.F.O. (respondent No. 2) to the Court of any other D.F.O. He submits that the petitioner now apprehends that he will not get justice before respondent No. 2 because he has already opened his mind against the petitioner in his counter affidavit. In opinion, the apprehension of the petitioner is well founded but at this juncture I cannot pass order of transfer of the confiscation case. However, if the petitioner is so much sure about his apprehension he may approach the Deputy Commissioner, Garhwa with such a prayer.

17. The presence of respondent No. 2 is dispensed with Let the entire records brought by him, be again handed over to him who is present in Court.