

Shankar Traders Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-23-1997

Judge : Sachchidanand Jha and M.Y. Eqbal, JJ.

Acts : [Forest Act, 1927](#) - Sections 41, 42 and 769; Bihar Timber and Others Forest Produce (Transit Regulation) Rules, 1973 - Rules 3 and 5; Bihar Forest Produce (Regulation of Trade) Act, 1984 - Sections 4

Appeal No. : C.W.J.C. No. 5561 of 1991

Appellant : Shankar Traders

Respondent : State of Bihar and ors.

Advocate for Def. : Rameshwar Prasad II, Adv. General and K.P. Yadav, S.C. 5 Veena Kumari Jaiswal, J.C. to A.C. and Suresh Kumar, J.C. to S.C. 5

Advocate for Pet/Ap. : T.K. Jha, Ajay Kumar Thakur, Gajendra Kumar Jha II and Ritesh Kumar, Advs.

Disposition : Petition dismissed

Prior history : S.N. Jha, J. 1. The petitioner is a proprietary firm engaged in the business of timber. In this writ petition it seeks, in effect and substance, a declaration that the authorities of the Forest Department of the State Government have no authority to interfere with the movement of timber of foreign origin from one place to another within or through the State of Bihar. The timber in question is

said to be 'Khair' wood brought into India from Nepal under a valid permit. 2. According to the petit

Judgement :

S.N. Jha, J.

1. The petitioner is a proprietary firm engaged in the business of timber. In this writ petition it seeks, in effect and substance, a declaration that the authorities of the Forest Department of the State Government have no authority to interfere with the movement of timber of foreign origin from one place to another within or through the State of Bihar. The timber in question is said to be 'Khair' wood brought into India from Nepal under a valid permit.

2. According to the petitioner, earlier there was restriction on import of timber from Nepal to India. By notification No. 200/90/Customs, dated 19th June, 1990 of the Ministry of Finance, Department of Revenue timber, among others, was exempted from customs duty. The Ministry of Commerce also issued consequential public notice on 11th September, 1990. Thus, by reason of the aforesaid two notifications movement of timber from Nepal to India became completely free. Neither any duty is to be paid nor penalty is to be imposed with respect to import of timber from Nepal. The entry of goods into India is allowed by the Customs Authorities after physical verification and necessary endorsement to that effect is made on the delivery challan. Copies of some such challans have been enclosed to the writ petition marked Annexure-5 series. It is said that except the districts of East Champaran and West Champaran, there is no forest and movement of timber in North Bihar. The Forest Department has prepared a map showing the forest areas in the State of Bihar in which districts of Muzaffarpur, Samastipur, Darbhanga and Madhubani have been shown to be non-forest area.

3. Despite the fact that timber is an exempted item, after the purchase of the goods in question, namely, khair wood, the petitioner informed the Divisional Forest Officer, Mithila Forest Extension Division, Darbhanga about the purchase and requested him to inform him (petitioner) as to whether transit permit was necessary for the movement of the goods and, in case the same was necessary,

to issue, transit permit. On 28th November, 1990 the Divisional Forest Officer, informed the petitioner that the goods should be kept in the concerned godown and in case the place of storage is to be changed intimation should be given. No transit permit, however, was issued. The petitioner informed the authorities that on account of the delay it was being put to huge loss because khair wood was losing its potentiality and value. In these circumstances after giving necessary intimation the goods were consigned for transportation to Bareilly (Ijratnagar railway station) in the State of Uttar Pradesh by railway wagons at Talsarai railway station on 14th July, 1991. The goods were kept in as many as six wagons, the particulars of which have been given in paragraph 16 of the writ petition.

4. This writ petition was filed on 14th August, 1991 seeking a declaration that the respondent-authorities of the Forest Department should be restrained from putting any obstruction on the movement of the wagons. It has been stated that since earlier also the authorities of the Forest Department had stopped wagons loaded with khair wood at Garhara Yard, they apprehend that they may again stop the movement of the khair wood to its destination;

5. It appears that before the writ petition was filed, on 13th August, 1991, the District Forest Officer, Mithila Forest Extension Division had asked the Area Manager, Garhara Yard to stop the onward movement of the six wagons in question on the ground that they were carrying illicit khair wood. The wood was finally seized on 16th August, 1991. The khair wood was thereafter carried to Darbhanga with intimation regarding seizure to the GRF Barauni, Goods Superintendent, Barauni railway station.

6. Two counter-affidavits have been filed on behalf of the respondents. In the affidavit sworn by Sri Digambar Thakur, Assistant Conservator of Forest, Mithila Extension Division, Darbhanga, facts have been stated to controvert the claim of the petitioner about the origin of the khair wood. The notifications issued by the Ministry of Finance, Department of Revenue, and the Ministry of Commerce, relied upon the petitioner, referred to above, have been described as wholly irrelevant as those notifications merely exempt the goods from payment of customs duty and they have no bearing on the question of free flow of timber from Nepal without

complying with the regulatory provisions of the Indian [Forest Act, 1927](#) and/or the Bihar Forest Produce (Regulation of Trade) Act, 1984 and the rules framed thereunder. It is said that even in the matter of import, for the purpose of customs duty, under the Bangkok Agreement 1976 and the Customs Tariff (Determination of Origin of Goods under the Agreement on Global System of Preference Among Developing Countries) Rules, 1989, any produce cannot be treated as the produce of a country unless a certificate of origin duly signed by the competent authority of the exporting country is produced by the Importer at the time of importation. It has been stated in the affidavit that as per the provision of the aforesaid Agreement and Rules, copies whereof have been marked as Annexures-J and K to the counter-affidavit, the petitioner was required to produce certificate of origin duly signed by the competent authority which he never produced and as such it cannot be said that khair wood in question is of Nepali origin. It has further been stated that by Notification Nos. 32 and 33, dated 18-6-90 a route has been notified for importation of the goods. The Bills of Entry relied upon by the petitioner refer to a route which is strictly prohibited for plying heavy vehicle. The respondents have alleged that the documents on which the petitioner has placed reliance are fabricated.

7. I may at this stage mention that no attempt was made by Mr. T. K. Jha, learned Counsel for the petitioner, to go into the dispute regarding the origin of the khair woods in question during hearing of the case. Submissions were made on the assumption that they are of Nepali origin. It was submitted that both the Indian Forest Act as well as the Bihar Forest Produce (Regulation of Trade) Act are applicable to local forest-produce, i.e., produce of Indian origin. No transit permit is, therefore, required to be obtained under these Acts with respect to such forest-produce which are of foreign origin. It was submitted that the only thing that a trader is required to do is to inform the local officers of the Forest Department about the purchase and importation of forest-produce from another country. Therefore, enquiry can be made regarding the origin of the forest-produce. But before ascertaining the facts and being satisfied that the forest-produce is indigenous, the officials have no jurisdiction to effect search or seizure.

8. Learned Advocate-General appearing on behalf of the respondents submitted that where forest-produce is seized in course of movement from one place to another within the territory of the State, the presumption is that the produce is of Indian origin, it is for the person carrying or transporting the produce to show that they are of foreign origin. He submitted that definition of the term 'forest-produce' under Section 2(4)(a) of the Indian Forest Act is wide enough to include produce of a forest lying outside the purview of the Act and, in any view, by virtue of the provisions of Section 41 of the said Act, transit rules framed by the State Government are applicable to all kinds of timber and forest produce specified therein. He placed reliance on *Kashi Prasad v. State of Orissa*, AIR 1963 Orissa 240, *State of Tripura v. Sashi Mohan Malakar*, 1977 Cri LJ 1663 and *Peter Bara v. State of Bihar*, 1994 (1) PLJR 620. He also referred to *State of Andhra Pradesh v. Korappati Subrahmanyam*, AIR 1995 SC 961.

9. The point for consideration is whether assuming the khair wood in question to be of Nepali origin, the impugned action of the respondents in making search and seizure of the wood was without any authority of law and, therefore, illegal.

10. The term 'forest produce' has been defined under Section 2(4) of the Indian [Forest Act, 1927](#) to include -

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

timber, charcoal, caouthouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams, and

(b) the following when found in, or brought

from a forest, that is to say :--

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinabove mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts of produce of such plants,

(iii) to (v).....

Section 41 of the Act empowers the State Government to make rules to regulate transit of forest-produce. The Section so far as relevant may be quoted hereunder :--

'41. Power to make rules to regulate transit of forest produce.-- (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may--

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into from or within (the State);

(b) prohibit the import and/or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefor;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;.....

Section 76 also confers additional powers to make rules on matters specified therein.

11. In exercise of the powers conferred by Section 41 of the Forest Act, read with Sections 42 and 76, the State Government has framed the Bihar Timber and other Forest-Produce (Transit Regulation) Rules, 1973. Rule 3 of the said Rules provides that no person can either import or export timber, fire-wood, Charcoal,

kutha etc. without written permit issued by the competent Forest Officer containing prescribed particulars. Rule 5 empowers Officers of the Forest Department or Police Officers to ask the person carrying the specified forest produce from one place to another to produce the permit for verification.

12. In *Kashi Prasad v. State of Orissa* (supra) the Division Bench of the Orissa High Court had the occasion to consider the question of competence of the authorities of the Forest Department to regulate the movement and transit of forest-produce grown on private lands. The Court, held that there was an implied power in the Government to regulate transit of timber and forest-produce even if it may not be the property of the Government. The Court noted that though most of the Sections of the Indian Forest Act deal with Government forest and Government lands and forest-produce grown on such property, there are many Sections specially those in Chapter VII which confer a regulatory power on the Government to control movement of forest-produce even though the produce may not be of Government. On this finding the validity of the Orissa Timber and Forest-Produce Transit Rules requiring a permit from the authorised Forest Official for a transit of mahua flowers or other forest-produce collected from the lands of private parties and not from the forest or lands belonging to the Government was upheld. In my opinion, on the same logic, the provisions of the Forest Act and the 1973 Transit Rules would be applicable to forest-produce brought from outside. In *State of Tripura v. Sashi Mohan Malakar* (supra) and *Peter Bara v. State of Bihar* (supra), the Gauhati High Court and this Court, respectively, relied upon the said decision of the Orissa High Court and upheld the prosecution of the accused persons.

13. As already noticed above, 'forest-produce' under Section 2(4) of the Forest Act falls in two categories, one category comprises of items enumerated in Clause (a), the other category consists of items mentioned in Clause (b). While in respect of the items mentioned in category (a) it has been specifically stated that these articles shall be 'Forest-Produce' whether found in or brought from a forest or not, in category (b) only such items have been specified as 'forest-produce' which are 'found in or brought from a forest'. The items catechu and kutha find mention in Clause (a). There cannot be any doubt, thus, having regard to the use of the

words 'or not', in clause (a) that the items mentioned therein have been given a wider meaning than the items mentioned in Clause (b). In other words, forest-produce coming in Clause (a) whether found in or brought from a forest or not is a forest-produce under Clause (a), those specified in Clause (b) are forest-produce only when found in or brought from a forest, not otherwise.

14. Section 52 of the Forest Act contains provisions regarding seizure of property liable to confiscation. By Bihar Act 9 of 1990 a new Section has been substituted in place of the original Section (of the Central Act). The Section authorises any Forest Officer or Police Officer, when there is reason to believe that a forest offence has been committed in respect of any forest-produce, to seize the produce, and produce the same before an officer not below the rank of Divisional Forest Officer authorised by the State Government. On the basis of such seizure both criminal prosecution can be launched and the forest-produce can be confiscated.

15. Besides, the Bihar Forest Produce (Regulation of Trade) Act, 1984 provides for monopoly trade in specified forest-produce. It prohibits any kind of purchase, transport or trade in specified forest-produce by any person other than the State Government, an authorised officer of the State Government or an Agent appointed under Section 4 of the Act. By Notification No. SO 579, dated 18-6-85 khair tree and kutha have been specified amongst others a forest-produce under the said Act. Section 15 of this Act also confers power of entry, search and seizure upon any Forest Officer not below the rank of a Range Officer or Police Officer not below the rank of Sub-Inspector of Police or any other person authorised by the State Government in that behalf.

16. In the above view of the matter it has to be held that khair wood being specified forest-produce under Clause (a) of Section 2(4) of the Indian [Forest Act, 1927](#), Bihar Forest Produce (Regulation of trade) Act, 1984 and the Bihar Timber and other Forest Produce (Transit Regulation) Rules, 1973, movement of khair wood is subject to the regulatory provision of the said two Acts and the Rules frame thereunder. If the power to regulate the transit of forest-produce alleged by foreign origin, within or through the territory of the State of Bihar is denied to the

authorities, it would facilitates illicit trade of forest-produce and help the unscrupulous traders, setting the regulatory provisions at naught.

17. As regards the claim of the petitioner that khair wood in question was of Nepali origin respondents have brought on record correspondence by the officers of the Forest Department of Nepal stating that the petitioner was never a bona fide purchaser of khair wood of Nepal, rather he appears to be a 'smuggler'. In fact, they have asked for particulars of the petitioner so that they can take action at their own end. The respondents have categorically stated that the petitioner does not have a chit of reliable paper to substantiate its claim that the khair wood in question is of Nepali origin. The respondents, therefore, were not only entitled to intercept the goods in order to satisfy themselves about the legality and bona fide of the movement of khair wood in question but were justified in effecting the seizure of the wood.

18. In view of the provisions of law indicated above and in the facts and circumstances of the case, I do not think the petitioner is entitled to any relief. The writ petition is, therefore, dismissed. I will make no order as to cost.

M. Y. Eqbal, J.

19. I agree.

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