

Shankar Traders Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-20-1998

Judge : Bisheshwar Prasad Singh and Bharat Prasad Sharma, JJ.

Acts : Bihar Forest Produce (Regulation of Trade) Act, 1984 - Sections 5; [Forest Act, 1927](#) - Sections 41; Transsit Rules - Rule 1

Appeal No. : Civil Writ Jurisdiction Case No. 1116 of 1992

Appellant : Shankar Traders

Respondent : State of Bihar and ors.

Advocate for Def. : B.N. Singh, Addl. AGI, Rajan Kumar Sinha, JC to Addl. AGI, Kishore Kumar Mandal, Sr. CGSC and Pankaj Kumar Singh, Adv.

Advocate for Pet/Ap. : Ram Balak Mahto, Sr. Adv. and Ajay Kumar Thakur, Adv.

Disposition : Petition allowed

Judgement :

B.P. Singh and B.P. Sharma, JJ.

1. The petitioner herein through its sole proprietor has prayed for the issuance of an appropriate writ, order or direction quashing the order dated 24-1-1992 passed by the Conservator of Forest. Magadh Division, Patna (respondent No. 4) rejecting

the application made by the petitioner for issue of transit permit for transporting Nepali Khair wood through the territory of the State of Bihar to other States, including Uttar Pradesh, and for a declaration that the Rules framed under the Bihar Forest Produce (Regulation of Trade) Act, 1984 shall not be applicable to forest produce which is only in transit through the State of Bihar, not being a forest produce of the State of Bihar.

2. The facts relevant for the disposal of the writ petition are that the petitioner is a proprietary concern registered by the Department of Commercial Taxes, Madhubani having its Registration No. MB 542(R). It is also registered under the Central Sales Tax (Regulation and Turn Over) Rule, 1957, and a certificate of registration has been issued to the petitioner-firm for dealing in Khair wood with Registration No. 359(C). The petitioner also claims registration under the Forest Department of Uttar Pradesh having Registration No. 41 for the year 1991, and is also registered under the Indian Forest Act, 1927 under Sections 41, 42, 51 and 78 read with Forest Produce Transport Rules, 1978, whereby it was granted permit for regulating its trade of forest produce in Uttar Pradesh enabling it to carry its foreign forest produce to any part of Uttar Pradesh.

3. The case of the petitioner is that it purchases forest produce in the State of Nepal and transports the same to different States, such as the State of Uttar Pradesh. It does not carry on any business in forest produce within the State of Bihar, nor does it carry on any business of transporting the same from one part of the State of Bihar to another. Whenever foreign forest produce is imported from Nepal to India, the officers of Land Custom Station check the same and after being satisfied about its genuineness, issue Bill of Entry evidencing import of goods inside the territory of India. By notifications (Annexures 1 and 2) issued by the Government of India, custom duty on Khair wood imported from Nepal was lifted and, therefore, no custom duty is payable on Khair wood imported from Nepal. The petitioner purchases Khair wood from various Nepali citizens within the territory of Nepal, and thereafter the wood purchased passes through the custom barrier and is checked by the officers of the Land Custom Station at Jaynagar, which is under the Government of India. After verification of the wood and after considering all other relevant aspects of the matter, the Bill of Entry is issued by

the custom authorities evidencing the fact that Khair wood of Nepali origin has been imported from Nepal. Accordingly, the petitioner purchased Khair wood from local citizens in Nepal and applied for grant of transit permit to the State authorities. Officials of the Forest Department passed no order on the application filed by the petitioner nor did they issue the transit permit prayed for, compelling the petitioner to file a writ petition before this Court being C.W.J.C. No. 4955 of 1991 for a direction to the respondents to issue transit permit to the petitioner. While the writ petition was pending, respondent No. 4 rejected the application of the petitioner for issuing transit permit, whereafter the petitioner filed an amendment application challenging the said order of refusal. By order dated 18-12-1991 the writ petition was disposed of by an order, which is Annexure-8 to the writ petition. It appears from the aforesaid order of this Court that counsel for the State stated that the order refusing to transit permit was passed in absence of any document to show the lawful entry of the wood into India. It was fairly stated that in case the petitioner was in possession of the relevant documents, he should produce the same before the authorities so that the documents may be examined and appropriate orders passed. Counsel for the petitioner stated that he had produced the relevant document before the authorities earlier, but he was willing to produce the same again. In these circumstances, the writ petition was disposed of with a direction to the petitioner to produce relevant documents on 9-1-1992 before respondent No. 4, who was directed to examine the matter and pass an appropriate order within two weeks thereafter. The impugned order of rejection, which was Annexure-10 in that writ petition, was quashed. The case of the petitioner is that on 9-1-1992 he produced before respondent No. 4 copies of Bills of Entry issued by the custom authorities. On being so directed, he also produced the original documents on 9th January 1992, whereafter, the impugned order (Annexure-10) has been passed on 24-1-1992. From the impugned order it appears that the application for grant of transit permit has been rejected on the ground that though the petitioner had produced the original Bills of Entry, he did not produce any other document. The petitioner had failed to produce any document relating to the purchase of Khair wood within the territory of Nepal, nor had he produced any valid licence from the Nepal authorities. It was, therefore, found that the Khair wood brought by the petitioner from Nepal in respect of which

transit permit was prayed for, had not been legally imported from Nepal, since no transit permit issued by the Nepal authorities had been produced. In view of these facts, the application filed by the petitioner for grant of transit permit was refused.

It would thus appear from the impugned order (Annexure-10) that it is not disputed that the Khair wood was brought from Nepal. It is not the case of the State of Bihar that the Khair wood is of Indian origin, or that the Bills of Entry issued by the custom authorities have been procured by misrepresentation of facts, or by preparation of fraud. The genuineness of Bills of Entry is also not challenged.

4. In the first counter-affidavit filed on behalf of respondent No. 4 it is stated that the petitioner claimed that the Khair wood in respect of which transit permit was prayed for was of Nepali origin. The concerned Divisional Forest Officer of Nepal was contacted, who by his letter (Annexure-C) informed that the Forest Department of Nepal does not sell Khair wood. nor is Khair wood available from private persons. Thus, Khair wood is smuggled out of Nepal by persons like the petitioner and, therefore, the Khair wood carried by them is smuggled Khair wood. In this view of the matter, the transit permit was not issued, as it appeared that the Khair wood brought from Nepal was not legally imported. A further counter-affidavit has been filed on behalf of respondents Nos. 1 to 5, State of Bihar and its officers, in which it is stated that pursuant to the order of this Court the petitioner had produced the Bills of Entry for import of free goods but did not produce any other paper or document concerning the disputed goods. Reliance is placed upon the provisions of Bihar Forest Produce (Regulation of Trade) Act, 1984. and it is submitted that no person, other than the Government, or its authorised officer, or an agent in respect of the Unit in which the specified forest produce is grown or found, is entitled to purchase or transport or import or export the specified forest produce. It is, therefore, submitted that the petitioner had no authority to import the wood in question, as it was clearly in contravention of Section 5 of the Act. It is further stated that the wood imported from Nepal must bear the hammer mark 'JA' and must be accompanied with a transit challan receipt. Since these were absent the application for issuance of transit permit could not be granted. It is not necessary to refer to other averments in this counter-affidavit in view of the stand taken by the Additional Advocate General No. 1 appearing on behalf of the State.

5. There is also a counter-affidavit filed on behalf of respondent No. 6 affirmed by the Assistant Collector, Customs (P) (Legal), Patna. It is stated that in public interest the Central Government had exempted customs duty over the import of Nepali Khair wood (forest products) by issuing a notification in the year 1990 under the provisions of Section 25 of the Customs Act, 1962 read with Customs Tariffs Act, 1975. Further, by notification dated 19-6-1990 the Government of India had exempted from the whole of the duty of customs several articles produced in Nepal and imported into India which includes forest produce and timber. Thus, forest produce and timber are permitted to be imported into India freely without any quantitative or Import Trade Control restriction as noticed under Public Notice dated 11-9-1990 of the Ministry of Commerce, Government of India. These notifications have been annexed as Annexures-A and B to the counter-affidavit.

It is further stated that the Bills of Entry for import of Khair wood and other forest products of Nepal imported into India from Nepal are given on those goods passing through Land Customs Station at Jayanagar. Complete record is maintained showing the grant of Bills of Entry, copies whereof are sent to other custom authorities. From the records maintained at Land Customs Station at Jayanagar it appears that the petitioner has been granted bill of import for the Khair wood passing through the Land Customs Station at Jayanagar. It is further contended that the goods imported into India from foreign countries are governed by the provisions of Customs Act, 1962, rules framed thereunder and Customs Tariff Act, 1975. The Customs Act, 1962 and Import & Export Control Act, 1947 is a self contained Act providing for seizure/ confiscation of the foreign goods, their movement or transshipment etc. Since the Khair wood passing through Land Customs Station at Jayanagar are covered by Bills of Entry, it is governed by the provisions of Customs Act, 1962, and the provisions of the Bihar Forest Act and/or any other local Act have no application to their export and import. In such matters the Central Act, namely, Customs Act, 1962 must prevail. Since the Khair wood in question were imported from Nepal evidenced by issuance of Bills of Entry issued by the custom authorities in accordance with law, the Divisional Forest Officer, Laheriasarai, Dharbhanga could not have ordered for their seizure, or insisted, for transit permit for transportation of Khair wood which were not forest produce of the State of Bihar or any other part of India.

6. It would thus appear that the Khair wood in question have been imported from Nepal. They have passed through the Land Custom Station at Jayangar, and the custom authorities have issued Bills of Entry in respect of those goods. The genuineness of the Bills of Entry is not challenged, and in fact respondent No. 6 has supported the case of the petitioner that the goods were imported from Nepal under valid Bills of Entry.

7. Under Section 41 of the Indian Forest Act, 1927 the State Government is vested with power to control 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. It is also authorised to frame rules to regulate the transit of all timber and other forest produce. Section 41 is, however, subject to the power of the Central Government, as conferred by Section 41A of the Act which provides that notwithstanding anything in Section 41, the Central Government may make rules to prescribe the route by which along timber or other forest produce may be imported, exported or moved into or from the territories to which this Act extends across any custom frontier as defined by the Central Government and any rules made under Section 41 shall have effect subject to the rules made under this section. The State of Bihar has framed Rules under Section 41 of the [Indian Forest Act, 1927](#). The Transit Rules of the year 1973 provide that the forest produce named therein shall not be exported or removed, without written permit issued by the Forest Officer or an officer authorised by him which must contain the following particulars:

(a) The name of the owners of the forest produce;

(b) The description and quantity of the forest

produce which is to be imported/exported or

removed;

(c) The description of the route or routes

through which the forest produce shall pass and

the station/destination;

(d) The period for which the permit shall be valid; and

(e) In case of timber the hammer mark registered with the Forest Officer;

It was not disputed before us that though Khair wood is a forest produce, it is not classified as timber either under the provisions of Indian Forest Act or under the Transit Rules and, therefore, there is no necessity of registered hammer mark in the case of Khair wood.

8. So far as the provisions of the Bihar Forest Produce (Regulation of Trade) Act, 1984 are concerned., it cannot be disputed that the provisions apply to such forest produce as the Government by notification may specify in that behalf. Under Section 5, on the issuance of a notification under Sub-sections (3) and (4) of Section 1 with respect to. any area, no person other than, the Government, officer of the Government authorised in writing in this behalf, or an agent in respect of the unit in which the specified forest produce is grown or found, shall purchase or transport or import such specified forest produce in and from such area. The provisions of the aforesaid Bihar Forest Produce -(Regulation of Trade) Act, 1984 apply to forest produce which are produced or grown or found within the territory of Bihar and if seeks to regulate the trade in forest produce within the State of Bihar. Obviously the State of Bihar has no extra territorial jurisdiction and cannot regulate the trade of forest produce at any place outside the State of Bihar, in the instant case the forest produce is not of Indian origin, as it has been imported from Nepal. The petitioner has only prayed for issuance of transit permit and is not a dealer dealing in forest produce within the State of Bihar. He had only prayed for a permit enabling him to move the imported Khair wood, which had come from Nepal to destination outside the State of Bihar. The authorities are required to issue a transit permit only for the purpose of the transportation of the goods outside the 'State of Bihar by the routes specified in the said permit. No doubt there are other provisions of the Act which authorise the competent officers to check the goods in transit.

9. The moot question which arises for consideration in this writ petition is whether having regard to the provisions of law, the forest authorities of the State of Bihar have any justification for refusing grant of transit permit to an importer of such forest produce from a foreign country on the ground that the documents relating to purchases of such goods in such foreign country and the documents relating to their movement in such foreign country, have not been produced. In our view, the forest authorities of the State of Bihar cannot question the importation of goods from a foreign country if the same is evidenced by valid Bills of Entry issued by the custom authorities. Once the foreign goods are validly imported, the State of Bihar cannot refuse transit permit if an application is made in the prescribed form, giving the necessary particulars. If the particulars furnished by the applicant are not in order, or there are reasons to believe that the goods which are shown as imported goods are really of local origin, it may be possible to contend that having regard to the provisions of the Bihar Forest Produce (Regulation of Trade) Act, 1984, the State authorities may question the importation of such goods, because there is material to show that the goods are of local origin, that is to say, the goods are the forest produce procured within the State of Bihar but fraudulently shown to have been imported from a foreign country. Such is not the case here. The goods imported from Nepal are covered by Bills of Entry issued by the custom authorities. Officials of the Forest Department of State of Bihar have not challenged the genuineness of the Bills of Entry issued by the custom authorities and they, therefore, have proceeded and must proceed on the basis that Khair wood has been imported from State of Nepal. We fail to understand how the transit permit can be refused on the ground that the importer has not produced any document to show from whom purchases were made in Nepal, and how the goods were transported within the territory of Nepal. The mere fact that Nepali officials had written that Khair wood is being smuggled from Nepal, is no ground for refusing a transit permit. If any theft takes place in the State of Nepal, or any forest produce is attempted to be exported in breach of the laws applicable in the State of Nepal, the Nepalese authorities may take such action as may be justified in law. If any law relating to import or export of such forest produce is violated in India, the custom authorities have jurisdiction to deal with the matter, and even to seize or confiscate such goods which are sought to be illegally imported. But, once the

goods are imported, and such import is not in breach of any law which is in force in India, the State forest authorities have no jurisdiction to question the legality of their importation. If the particulars which the applicant is required to furnish for issuance of transit permit, are furnished by the applicant and there is no objection to the particulars furnished, a transit permit must be issued. If the stand taken by the State of Bihar is upheld, it would not only impinge upon the jurisdiction and authority of the Central Government but it would also adversely affect free flow of inter-State trade and commerce, because the permit asked for is only for the purpose of transportation of goods through the territory of Bihar, and not for carrying on business in any forest produce within the State of Bihar. As earlier noticed the impugned order proceeds on the basis that the Khair wood is imported from Nepal. It is not the case of the State of Bihar that the Khair wood imported by the petitioner is really Khair wood of Indian origin and procured within the State of Bihar, but shown to have been imported by misrepresenting facts before the custom authorities. We have, therefore, no doubt that respondent No. 4 has erred in law in refusing to issue the transit permit.

10. This writ petition is, therefore, allowed and the impugned order (Annexure-10) dated 24-1-1992 is quashed. The respondents shall now proceed to issue the transit permit in accordance with law.

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