

Chandra Naik Vs. State

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Court : Orissa

Decided On : Jan-22-1993

Reported in : 76(1993)CLT361; 1993CriLJ2128; 1993(I)OLR456

Judge : L. Rath, J.

Acts : Orissa Forest Act, 1972 - Sections 21 and 27(3)

Appeal No. : Crl. Revision No. 266 of 1989

Appellant : Chandra Naik

Respondent : State

Advocate for Def. : A.G.A. and ;S.S. Rao, Adv.

Advocate for Pet/Ap. : U.C. Panda, Adv.

Judgement :

L. Rath, J.

1. The sole point urged by the learned counsel for the petitioner in this case is that the petitioner's conviction Under Section 27(3)(a) of the Orissa Forest Act, 1972 and sentence to simple imprisonment for two months and fine of Rs. 2,500/- in default to undergo simple imprisonment for a further period of one month on the allegation of his having cut four Sal trees inside Jagannath Prasad reserved forest

to be unwarranted since it was never proved that the forest in question was a reserved forest. The petitioner was alleged to have illegally cut the trees on 10-12-1985 and such fact having been proved, his conviction ensued. The conviction and sentence have also been confirmed in appeal.

2. Section 27 (3) (a) of the Orissa Forest Act provides that any person who, in a reserved forest, inter alia, fells any tree or plant shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees. For conviction under the section it is hence necessary to establish that the felling of tree had been made inside a reserved forest. Section 21 of the Act deals with notifications declaring forest reserved and says that when a forest is to be declared as such, the State Government is to publish a notification specifying, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the reservation to take effect from a date to be specified in the notification. From the date so specified the forest is to be deemed to be a reserved forest. Section 22 provides that before the date specified in the notification Under Section 21, the Divisional Forest Officer shall cause a translation thereof into Oriya to be published at a conspicuous place in every town and village in the neighbourhood of the forest and also in such other manner as may be prescribed. In the case, Ext. 4 has been filed stating it to be the notification declaring Jagannath Prasad forest as a reserved one.

3. Mr. U. C. Panda, learned counsel for the petitioner has urged that Ext. 4 is only a cyclostyled copy of a typed notification attended as true copy by the D. F. O., Ghumsur North Division and is not a notification Under Section 21 (1) of the Act. It is also his submission that it has not been proved that the steps Under Section 22 of the Act has been taken. Reliance has been placed by him on 36 (1970) CLT 395 (Sadhu Patra v. State of Orissa), 43 (1977) CLT 365 (Arjun Behera v. State), and 45 (1973) CLT 611 (Bahani Santa v. State of Orissa) to submit that unless a proper notification is proved, an offence Under Section 27 of the Act cannot be said to have been committed. It is undoubtedly true that in all these decisions view had been taken that the notification as required Under Section 21 of the Act must be proved to have been duly made and without such evidence a conviction cannot

be sustained. In 36 (1970) CLT 395 (supra) the Court held, dealing with the pari materia provisions of the Indian Forest Act, that mere production of the notification itself of a copy duly certified to be a true copy was not enough and it would also have to be proved that the notification had been published in the manner and in accordance with the provisions of Section 21 which correspond to Section 27 of the present Orissa Forest Act. The notification in question had been issued by the Nilgiri Darbar and had been sought to be proved by production of a certified copy so certified by the Divisional Forest Officer. It was held that undoubtedly the notification issued by the Nilgiri Darbar would be a public document of which secondary evidence could be given as provided Under Section 65(e) of the Evidence Act and as per Section 73 of that Act dealing with proof of official document, the notification could be proved by certificate of the concerned Head of Department. The notification as such was held not to have been proved not having been certified by the Head of Department but by the D.F.O. who was not the Head of the Department.

4. It has however been urged by the learned Addl. Govt. Advocate Mr. Rao that the decisions relied upon by Mr. Panda are inapplicable since the Orissa Forest Act as amended by Orissa Act 9 of 1983 introducing Sub-section (3) to Section 21 of the Act that production of an authenticated copy of a notification published under Sub-section (1) shall be conclusive proof that the forest the limits whereof have been specified therein, is a reserved forest. It is his further submission that Jagannath Prasad Forest was declared reserved in 1893 Under Section 16 of the Madras Forest Act, 1852 (Madras Act 5/82) and that the notification made under that Act is saved Under Section 91 of the Orissa Forest Act, 72 providing in Sub-sec, (a) thereof that any forest or land declared to be a reserved forest, inter alia, under the Madras Act shall be deemed to be a reserved forest under the Orissa Act, and in Sub-section (b) thereof that the notification issued inter alia under the Madras Act shall be deemed to have been issued under the Orissa Act and shall continue in force until new provisions are made under it.

5. It is no doubt true that if a notification was made under the Madras Forest Act declaring Jagannath Prasad Forest as a reserved forest, it would be deemed to be a reserved forest also under the Orissa Act and the notification shall be deemed to

have been issued Under Section 21 of the Act and that such a notification would become admissible in evidence and conclusive proof of the fact that the forest in question is a reserved forest if a copy as required Under Section 21 (3) of the Act is produced before a Court of law. .

6. The question raised by Mr. Panda is however that Ext. 4 as produced in Court cannot be said to be one satisfying the requirement of Section 21 (3) of the Act and further there is also no evidence led that Section 22 of the Act had been complied with. Section 21 (3) is in the following words :

'Production of an authenticated copy of a notification published under Sub-section (1) shall be conclusive proof that the forest the limits whereof have been specified therein, is a reserved forest.'

The words *ex facie* that if an authenticated copy of a notification is produced, it would be taken as conclusive proof of the forest being a reserved one. But the Act nowhere specifies what is an authenticated copy or when can a copy be called authenticated copy of the notification. Nothing has been specified in the Act as to who is the officer authorised to authenticate the copy of the notification. Reliance has been placed by the learned Addl. Govt. Advocate on Section 78 of the Evidence Act but that section says that a public document, which a notification Under Section 21 of the Forest Act undoubtedly is, to be proved, so far as the State Government notifications are concerned, by the records of the department certified by the Head of the Department. Admittedly Ext. 4 is not a record of the Forest Department nor has it been certified by the Head of the Department. The learned Addl. Govt. Advocate had been given ample adjournments to produce the original of Ext 4 but he was not able to do so till 15-1-1993 when orders were passed that unless the original notification was produced by 23-1-1993, i.e. today, adverse inference would be drawn against the State in the matter. But even apart from such question, the scope of Sub-section (3) of Section 21 of the Act may be examined. 'Authentication' is not mere attestation of a copy as true copy. The word has been explained in Black's Law Dictionary, Sixth Edition as to mean in the law of evidence, the act or mode of giving authority or legal authenticity to a statute, record, or other written instrument, or a certified copy thereof, so as to render it

legally admissible in evidence, verification of judgments, an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do. Jowitt's Law Dictionary gives the identical meaning to the word. Words and Phrases, Permanent Edition, Vol. 4 by St. Paul, Minn., West Publishing Co. explains :

'Authentication' of any document is that which is certified concerning it by the proper certifying officer.'

Again it has been explained :

'The authentication of a written instrument is such official attestation as will render it legally admissible in evidence.'

Thus in making an act of authentication, the officer who makes it is to declare his authority to do so, his having been appointed properly by the authority for the purpose and has to say that the authenticated document is in due form of law.

Art. 166(2) of the Constitution of India provides that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and that the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Under the provision, it is mandatory to prescribe the manner of authentication and once the document is authenticated in that manner, questioning of its validity is not open to be made. It is seen from Basu's Commentary relating to Art. 307(2) of the Constitution of India that the rules of the Lok Sabha and the rules of the Council of States provide that when Bills have been passed by the respective Houses and are to be presented to the President they are to be authenticated respectively by the signature of the Speaker or the signature of the Chairman, as the case may be, and submitted to the President.

Thus what transpires from the above discussions is that whenever a provision is made in law for authentication of a notification or of a document with a view to seal it from the scrutiny of the Court as regards its validity, the law must also state as to

in what form or manner the authentication is to be made and by which officer. Unless such provisions are made, the benefit of the provision would not be available to the person or authority who claims it.

7. In that view of the matter, the submission made by the learned Addl. Govt. Advocate has to be repelled as Ext. 4 cannot be said to be a document properly authenticated. Once such protection is lost, the decisions of this Court as earlier delivered and referred to supra would become applicable and the position of law would remain as it was when those cases were decided. The petition hence must succeed and the conviction and sentence of the petitioner are set aside.

8. In view of the observations made, it is not further necessary to go into the question as to whether publication Under Section 22 was made, particularly in view of the fact that Mr. Panda has not shown that under the Madras Forest Act there was any corresponding provision to Section 32 of the Orissa Forest Act.

9. In parting it is however to be observed that a provision of law, which was enacted with the purpose of sealing the route of escape for persons violating the law inside reserved forest, becomes enforceable because of the inadequacy of the provision made. A copy of the judgment be sent to the Secretary, Forest Department so that the necessary amendment of the law may be carried out.

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