

Md. Umar Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Oct-23-1986

Reported in : 63(1987)CLT179; 1986(II)OLR632

Judge : G.B. Pattnaik and ;L. Rath, JJ.

Acts : Orissa Timber and Other Forest Produce Transit Rules, 1980 - Rules 7 and 8

Appeal No. : Original Jurisdiction Case No. 3165 of 1985

Appellant : Md. Umar

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R. Mohanty and J. Mohanty

Disposition : Application allowed

Judgement :

L. Rath, J.

The petitioner has moved this Court under Arts, 226 and 227 of the Constitution of India for issue of a direction to the Divisional Forest Officer, Bonaigarh, opp. party No. 3 to issue felling order in respect of the trees purchased by him and for issuing

timber transit permit.

After stating facts, counter and rejoinder, it is found :

5. The narration of the facts as above discloses a deplorable state of things. The T. T. Permits are issued under the provisions of the Orissa Timber and Other Forest Produce Transit Rules, 1980 (hereinafter called 'the Rules') framed under the provisions of the Orissa Forest Act, 1972 (Orissa Act 14 of 1972). The rules are regulatory in nature and purport to regulate movement of timber in the State and provide that subject to some exceptions, all forest produce in transit by land/rail, or/ water shall be covered by a permit to be called the 'Transit Permit' which is to be issued free of cost by the Divisional Forest Officer or by the Assistant Conservator of Forests authorised by him in that behalf Rule 7 of the rules requires that any person desiring to remove forest produce shall apply for a transit permit and that on receipt of the application, the Forest Officer having jurisdiction shall cause an enquiry where necessary, in the manner prescribed. All the orders refusing to grant permit is to be in writing and is to state the reasons for refusal and is to be communicated to the applicant. Sub-rule 8 of Rule 7 prescribes the procedure for making the enquiry when application is made for removal of timber etc. from private holdings and provides that when required by the Divisional Forest Officer or the Assistant Conservator of Forest duly authorised in that behalf, the applicant is to pay the Amin's fees, if any, prescribed for requisitioning the services of an Amin from the Tahasil Office for joint verification by Revenue and Forest Officials of plots and trees and bamboos mentioned In the application for transit permit. On completion of such joint verification, if no discrepancies,are noticed in the field, the Divisional Forest Officer may direct the applicant to submit a list of conversions of trees felled and converted by him over those plots and to put the facsimile of his registered property mark on either ends of all timber including round-wood-billets. After receiving conversion list, the Divisional Forest Officer is to get it verified and brand the timber including round-wood-billets with the Forest Department bakker mark bearing the letters 'P. T ' and that after conversion list has been verified and the hammer mark has been branded, the Divisional Forest Officer shall issue the transit permit.

6. 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 tittle. 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.

7. As the facts disclose, the department does not appear to have any reasonable excuse not to have issued the T. T. permit in favour of the petitioner. The very application, which was made in January, 1983 was first attended to 3. 1/2 years after merely for the issue of a request to the Tahasildar to depute an Amin to attend the joint verification. It is apparent that private rights of the petitioner was being attended to and interfered with in a cavalier fashion. Even after the joint verification was made, yet a further eight months' time was taken merely to direct the petitioner to submit the conversion list and that too only in respect of the trees of six tenants out of trees of 27 tenants which was jointly verified. No reason has been shown as to why the joint verification in respect of all the 98 tenants was not done and it appears that such joint verification has not yet been done. Even after the petitioner had submitted the conversion list, yet no T. T. permit was issued in his favour and instead a negotiation was taken up behind his back to sell away his timber to the Orissa Forest Corporation for which no authority has also been shown to us. After the petitioner expressed his unwillingness, the letter in

Annexure-10 was issued on 8-12-1985 calling upon him to furnish informations which were already with the opposite party No. 3 and telling him that unless he supplies such informations, the felling order cannot be issued As the petitioner has pointed out, these informations were available with the opposite party No. 3 as early as 1982 having been finished by the Tahasildar as per Annexure-13. The joint verification report had also been submitted to the opposite party No. 3 by his own Range Officer and it was not for the petitioner to furnish a copy of it.

8. The direction to submit such informations on the threat of not issuing the felling order had also no authority in law, There is nothing in the rules which authorises the opp. party No. 3 to issue a felling order. On the contrary, Rule 7(8) (b) only authorises the Divisional Forest Officer to direct the applicant to submit a conversion list of the trees felled by him and converted by him to logs. It is open to the applicant to fell his own trees and convert the same without waiting for any permission from the forest authorities. There is no restriction in the rules in that regard.

9. The fact that due to non-action of the opp. party No. 3 for issue of T. T. permit, the timber had been washed away in the floods is acknowledged in the very reports of the Assistant Conservator of Forests, the Annexure-B/3 series. The reports were submitted in 1984 and thereafter in 1985 the opp. party No. 3 himself communicated the Assistant Conservator of Forests that the plots had been re-verified jointly by the Revenue Amin and the Range Forest Officer and things were found to be correct and proper and that he should take steps to pass logs and issue T. T. permit. This fact however was not adverted to in the return filed before this Court and instead action of the opp. party No. 3 was sought to be justified on the basis of the reports of the Assistant Conservator of Forests in Annexure B/3 series. The return thus betrays a complete non-application of mind by the opp. party No. 3 to the facts of the case while filing the same or a wilful suppression of facts from the Court so as to mislead the Court. In either case, it calls for strong condemnation of the conduct of the opp. party No. 3. The Courts do look forward for a proper statement of facts from the public officers since because of their office, their statements are entitled to great weight If the basic facts are either suppressed or misstated, the decisions of the Court are bound to suffer.

10. In the result, the writ application must succeed A writ be issued quashing Annexure-10 and directing the opp. party No. 3 to pass orders on the application of the petitioner regarding issue of T. T. permit to him in respect of all the plots on which the joint verification was made, within 15 days from the date of the receipt of our order. The petitioner is entitled to costs of this proceeding. Hearing fee is assessed at Rs. 200/-.

G.B. Pattnaik, J.

11. I agree.

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