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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7241/2013

BIJOY BASUMTARY
S/O SRI KALICHARAN BASUMATARY, R/O VILL- NATUNPARA P.O. TEZPUR
WARD NO. 13, TEZPUR TOWN, DIST. SONITPUR, ASSAM.

VERSUS

THE BODOLAND TERRITORIAL COUNCIL and 5 ORS
KOKRAJHAR, REP. BY THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF
FOREST FOREST, B.T.C. KOKRAJHAR, ASSAM, PIN- 783370.

2:ADDL. PRINCIPAL CHIEF CONSERVATOR OF FOREST
CUM COUNCIL HEAD OF DEPARTMENT
FOREST B.T.C. KOKRAJHAR
ASSAM
PIN- 783370.

3:THE CHIEF CONSERVATOR OF FOREST

BTC
KOKRAJHAR CUM THE COUNCIL HEAD OF DEPARTMENT
FORESTS
BTC
KOKRAJHAR
ASSAM
PIN- 783370.

4:THE DIVISIONAL FOREST OFFICER
CHIRANG DIVISION
KAJALGAON
BTC
ASSAM
PIN- 783385.

5:THE RANGE OFFICER
AMTEKA RANGE
KOILAMOILA DIST. CHIRANG
BTC
ASSAM
PIN- 783393.

6:THE RANGE OFFICER
KUKLUNG RANGE
KUKLUNG
DIST. CHIRANG
BTC
ASSAM
PIN- 783393.

7:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL CHIEF
CONSERVATOR OF FOREST AND HEAD OF FOREST FORCE.

8:CONSERVATOR OF FOREST
(LEGAL

Advocate for the Petitioner : Mr. P. C. Dey, Advocate

Advocate for the Respondents : Ms. R. B. Bora, SC, BTC
Mr. K. P. Pathak, SC, Forest

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.08.2024

Date of Judgment : 29.11.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. P. C. Dey, the learned counsel appearing on behalf of the petitioner. Ms. R. B. Bora, the learned counsel appears on behalf of the Bodoland Territorial Council (BTC) and Mr. K. P. Pathak, the learned counsel appears on behalf of the Forest Department of the Government of Assam.

2. The instant writ petition was filed by the petitioner being aggrieved by the action on the part of the Respondent Authorities in not issuing the Transit Pass for transportation of the already collected Ayurvedic herbs (Bhatgila barks) outside the State of Assam; for a writ in the nature of certiorari for setting aside the order/letter dated 26.04.2012 issued by the Chief Conservator of Forest and CHD, BTC, Kokrajhar and for a further direction for releasing the collected Bhatgila barks from the custody of the respective Forest Range Officers of Amteka and Kuklung Range and allow the petitioner to sell those goods outside the State of Assam. In addition to that, the petitioner has also sought for compensation for causing damages to the collected Bhatgila barks and for sustaining huge loss to the petitioner for not issuing the necessary Transit Pass for lifting the same.

3. From a perusal of the materials on record, it transpires that it is the case of the petitioner that the petitioner submitted an application on 01.02.2010 before the Divisional Forest Officer (DFO), Chirang Division, Kajalgaon praying for permission for collection of Ayurvedic medicinal herbs (Bhatgila barks) from various villages under Kuklung and Amteka Ranges under the Chirang Division of BTC to enable him to earn his livelihood.

4. Pursuant thereto, the Divisional Forest Officer, Chirang Division directed the Range Officers of Kuklung Range and Amteka Range vide the letter dated 03.02.2010 to submit a detailed verification report to him for further necessary action.

5. The Range Officers of Amteka Range, Koylamaila submitted a

verification letter dated 12.02.2010 as regards the availability of Bhatgila trees in different revenue villages under Amteka Range before the Divisional Forest Officer, Chirang Division. In the said report, it was mentioned that in the Amteka Range, there were 300 numbers of trees in 29 numbers of revenue villages and it was stated that 50-60 tonnes barks may be collected from this area. Similarly, the Range Officer of Kuklung Range submitted a verification report dated 15.02.010 stating that there were 45 numbers of revenue villages where Bhatgila trees are available and about 70 to 80 tonnes of Bhatgila barks may be extracted from those revenue villages.

6. On the basis of the said verification, the Divisional Forest Officer, Chirang Division placed the same before the Council Head of the Department of Forest, BTC along with the application dated 01.02.2010 of the petitioner for necessary action vide the communication dated 19.02.2010.

7. The Council Head of the Department of Forest, BTC after scrutiny and verification of the reports of the Range Officers and the Divisional Forest Officer, Chirang Division had passed an order vide letter dated 20.05.2010 whereby directed the Divisional Forest Officer, Chirang Division to allow the petitioner for collection of Ayurvedic medicinal herbs (Bhatgila barks) from the revenue villages under Kuklung and Amteka Ranges.

8. On the basis of the said order dated 20.05.2010, the Divisional Forest Officer, Chirang Division vide another communication dated 28.07.2010 directed the Range Officers of Kuklung and Amteka Ranges to allow the petitioner to collect the Bhatgila barks from the revenue villages by following

certain procedures. The procedures were: (i) to direct one responsible staff village-wise and get signature of the village Headman when Bhatgila barks are collected and the names of the villagers/Patta Numbers etc.; (ii) for each tree, amount of barks must be indicated so that lifting order can be issued.

9. The petitioner thereupon by following the procedure collected the said Bhatgila barks from various revenue villages by recording the names of the villages, quantity of barks collected from the number of trees in presence of the concerned Gaonburhas of the revenue villages who put their signatures in the prescribed format. The petitioner in this process collected 33,821 kgs of Bhatgila barks from 877 numbers of trees of 11 revenue villages which was duly signed by the concerned Gaonburhas. The same was informed before the Range Officer of the Kuklung Range who in turn written a letter dated 11.02.2011 to the Divisional Forest Officer, Chirang Division and forwarded the said information in the prescribed format for necessary action.

10. The Divisional Forest Officer, Chirang Division then placed the same before the Chief Conservator of Forest, BTC, Kokrajhar further for necessary action.

11. The Chief Conservator of Forest, BTC, Kokrajhar issued a letter dated 24.02.2011 directing the Divisional Forest Officer, Chirang Division to allow the petitioner for transportation of Bhatgila barks of 33,821 kgs outside the State by rail/road on payment of necessary fees.

12. The Divisional Forest Officer, Chirang Division vide another order dated 28.02.2011 directed the Range Officer Kuklung Range to allow the

petitioner for lifting of the collected Bhatgila barks of 33,821 kgs and to realize the royalty of Rs.3,383/- and VAT of Rs.457/- and to deposit the amount in the treasury and thereupon to issue the Transportation Certificate (Transit Pass) to the petitioner.

13. Pursuant to the said order, the petitioner deposited the royalty of Rs.3,383/- as well as the VAT of Rs.457/- before the Range Officer of Kuklung Range on 04.03.2011 through Challan dated 29.03.2011. Thereupon, the petitioner sent the said collected Bhatgila barks outside the State of Assam to Dehradun, Delhi, Faridabad etc. on being issued the necessary Transit Pass either by road or by train.

14. It is the further case of the petitioner that in addition to the above 33,821 kgs of Bhatgila barks, the petitioner had also collected 30,865 kgs of Bhatgila barks from 14 numbers of villages out of 29 villages under Amteka Forest Range Office, Koylamaila by maintaining the proforma details which have been submitted before the Forest Range Officer, Amteka Range. In addition to that, the petitioner had also collected 40,678 kgs of Bhatgila barks from 15 numbers of revenue villages out of 45 villages and the details of which have been given as per the proforma before the Range Officer, Kuklung Range. These aspects of the matter were duly informed to both the Forest Range Officers of Amteka Range and Kuklung Range, which was in turn informed to the Divisional Forest Officer, Chirang Division vide letters dated 14.03.2012 and 23.03.2012.

15. The Divisional Forest Officer, Chirang Division on receipt of the said

information of the collection of the Bhatgila barks from the Forest Range Officers of Amteka Range and Kuklung Range wrote letters dated 19.04.2012 to the Chief Conservator of Forest, BTC, Kokrajhar informing him about collection of 40,670 kgs of Bhatgila barks from the revenue villages under the Kuklung Range and 30,865 kgs of Bhatgila barks from the revenue villages under Amteka Range and also requested that the Transit Pass be issued with the destination to Bongaigaon only and requested him to take necessary action.

16. It has been alleged in the writ petition that the Divisional Forest Officer, Chirang Division ought to have written to the Chief Conservator of Forest, BTC, Kokrajhar for permitting the petitioner to take the Bhatgila barks outside the State of Assam which the petitioner had on the earlier occasion been permitted. But, the Divisional Forest Officer, Chirang Division had requested for issuance of the Transit Pass to Bongaigaon only.

17. The Chief Conservator of Forest, BTC, Kokrajhar, upon receipt of the communication dated 19.04.2012, issued a communication dated 26.04.2012 thereby directing the Divisional Forest Officer, Chirang Division to submit a report in the format given in the said letter in respect of Phase-I and Phase-II collection of Bhatgila barks separately and also directed to take the collected Bhatgila barks under the Departmental custody until further orders.

18. The Divisional Forest Officer, Chirang Division, on receipt of the said letter dated 26.04.2012, forwarded the same on 02.05.2012 to the Range Officers of Amteka Range and Kuklung Range directing them to submit the

report of collection of Bhatgila barks as per the format given in the letter dated 26.04.2012. On the basis of the said communication dated 02.05.2012, the Range Officer of Amteka Range, Koylamaila submitted his report of the collected Bhatgila barks in the prescribed format vide the letter dated 24.05.2012. Similarly, the Forest Range Officer of Kuklung Range had also submitted a report of collection of Bhatgila barks in the revenue villages of Kuklung Range as per the prescribed format on 15.05.2012.

19. The Divisional Forest Officer, Chirang Division on receipt of the reports from the respective Range Officers of Amteka Range and Kuklung Range forwarded the same to the Chief Conservator of Forest, BTC, Kokrajhar vide the communication dated 12.06.2012. However, no Transit Pass was issued to the petitioner. The petitioner, on various occasions, approached the authorities but the petitioner's grievances remained unredressed.

20. It is further stated in the writ petition that on 05.11.2013, the Divisional Forest Officer, Chirang Division wrote a letter to the Additional Principal Chief Conservator of Forest-cum-Council Head of the Department, Forest, BTC stating inter-alia that as per the report of the Range Officers of Amteka and Kuklung Ranges, 39,453 kgs and 46,044 kgs of Bhatgila barks have been collected by the petitioner till May, 2012 and the petitioner may be allowed for transportation of those Bhatgila barks as was done in the earlier occasions otherwise some legal implications for not allowing the petitioner to transport the collected Bhatgila barks may arise since Transit Pass was issued by the authorities earlier. However, no action was taken by the Additional Principal Chief Conservator of Forest-cum-CHD, BTC. Being aggrieved by the

inaction on the part of the respondent authorities in not allowing the permission for removal of the said Bhatgila barks which were collected by the petitioner, the instant writ petition was filed seeking the reliefs as already mentioned herein above.

21. This Court vide the order dated 11.12.2013 issued notice. Thereupon, it reveals from the records that various pleadings have been filed. The stand so taken in the affidavit filed on 05.03.2014 by the respondent Nos.1 to 6 is that vide the letter dated 30.06.2012, the Conservator of Forest (Legal), Government of Assam had directed all Divisional Forest Officers in Assam to comply with the order passed by the Supreme Court in WP(C) No.202/1995 wherein it was stated that no barks of trees which included Bhatgila barks shall be allowed to be transported outside the State of Assam. Further to that, on verification, it also came to light that only 41 households out of 92 households had Bhatgila trees in their Patta land (revenue land). In addition to that, from a close perusal of the topographical sheet prepared by the Survey of India, it was crystal clear that the revenue villages shared a boundary with the Manas Reserve Forest and taking into consideration the quantity of barks collected and the availability in the revenue villages, the petitioner had procured the Bhatgila barks from the Manas Reserve Forest. It was also mentioned that from the reports submitted by the respondent No.6, only 13 out of 168 numbers of patta land owners had Bhatgila trees on the Patta land. Under such circumstances, it was stated that the petitioner had illegally procured the Bhatgila barks from the Reserve Forest which he was not entitled to do so.

22. Further to that it was mentioned in the said affidavit-in-opposition that the Chief Conservator of Forest, BTC, Kokrajhar insisted the Divisional Forest Officer, Chirang Division for personal verification. The Divisional Forest Officer, Chirang Division on 04.12.2012 had submitted a report indicating therein that the said Officer had personally inspected the Kuklung Range and found that not enough Bhatgila trees or stumps were seen in Dongsiapara Revenue Village whereas it was reported that around 2330 kgs of barks were collected from 10 households on the basis of which a report was submitted on 12.12.2013.

23. It was also stated that again upon the direction of the respondent No.2 dated 18.12.2013, the Divisional Forest Officer, Chirang Division had seized the balanced quantity of Bhatgila barks as collection of Bhatgila barks from the Reserve Forest was a forest offence under the Assam Forest Regulation, 1891 (for short, 'the Regulation'). In addition to that, the Conservator of Forest, Manas National Park had also requested to carry out an inquiry against the erring officials and the inquiry was pending in that regard.

24. It also transpires from the affidavit-in-opposition that on 24.12.2013, the Divisional Forest Officer, Chirang Division had directed the Range Officers of Kuklung and Amteka Ranges to seize the Bhatgila barks and draw an offence against the petitioner under Sections 24 & 25 of the Regulation. It was further mentioned that the question of issuance of Transit Pass did not arise when the whole matter was under enquiry.

25. To the said affidavit-in-opposition filed by the respondent Nos.1 to 6,

the petitioner submitted a reply. In the reply, the petitioner submitted that the petitioner had collected the Bhatgila barks from the revenue villages which were identified by the respondent Nos.4, 5 & 6 and by maintaining the proper format issued by the respondent No.4 from the Pattadars of the land. The petitioner further mentioned that he did not collect any Bhatgila barks from the Manas Reserve Forest, and as such, the allegation that the petitioner had collected the Bhatgila barks from the Manas Reserve Forest was not correct. It was further mentioned that the pattadars of the villages in Khagrabari, Parbatipur, Koylamoyla, Sishubari (1), Sishubari (2), Lanthibari (1), Narayanpur, Patabari had Bhatgila trees about 79 numbers but in the said report, it was stated that from those trees of those villages, no barks were collected which was not believable. It was further mentioned that the allegation that the petitioner did not collect the barks from the various villages had no basis.

26. It is further seen that an additional affidavit-in-opposition was filed on 06.06.2018 by the respondent Nos.1 to 6 to bring on record certain additional facts which came into light after the filing of the affidavit-in-opposition. In the said additional affidavit-in-opposition, it was mentioned that there was a circular from the Office of the Principal Chief Conservator of Forest and HoFF, Assam that as per the orders passed by the Supreme Court of India in WP(C) No.202/1995 and the orders passed by the PCCF, Assam, no bark of any tree was allowed to be transported. It was further mentioned that based upon some allegations of illegal collection of Bhatgila barks from the forest area, the CCF and CHD Forest, BTC had issued an order for spot verification

to the Divisional Forest Officer, Chirang Division. During the spot verification carried out, it was observed that there were no sufficient Bhatgila trees and stems as per the earlier report and submitted his report to the Additional PCCF and CHD Forest, BTC. It was further mentioned that based on the report, the Additional PCCF and CHD Forest, BTC had issued an order to seize the entire balance quantity of Bhatgila barks collected by the petitioner on 18.12.2013. On the basis of the said order, the Divisional Forest Officer, Chirang Division had also directed the Range Officer Kuklung to seize the balanced quantity of Bhatgila barks collected by the petitioner. It was mentioned that the Range Officer, Kuklung had seized 4,375 kgs of Bhatgila barks from the possession of the petitioner on 01.02.2014. After seizing of the barks, the Range Officer, Kuklung sent show cause notice to the petitioner on two occasions on 07.03.2014 and 22.03.2014, but the petitioner did not receive the notice though it was served by speed post. So, no offence report could be drawn up against him. It was also mentioned that the Range Officer, Kuklung kept the seized 125 bags (gunny bags) wherein 4375 kgs of barks in his Office and all these gunny bags, in the meantime, had deteriorated and seized barks had also decomposed.

27. It is further seen that on 04.05.2024, another affidavit-in-opposition was filed by the respondent No.4 wherein in addition to the earlier statements, the notices which were issued to the petitioner for appearing in connection with the seized barks and the petitioner was asked to attend for recording his statement within five days from the date of issue of the letter, were enclosed. It was stated that the petitioner did not respond to the notices. It was further

mentioned that as the barks were perishable article, it could not be stored for longer time. Further to that, there were communal violence which broke out during 2012-13 in BTC area and many of the stored articles were destroyed due to fire accident, and as such, there was no trace of the said seized articles.

28. On 08.08.2024, another additional affidavit was filed by the Additional PCCF-cum-CHD, Forest, BTC wherein amongst others, it was mentioned that in the order dated 15.01.1998 passed by the Supreme Court in WP(C) No.202/1995, it was made mandatory to have a working plan in every State Division in a scientific and sustainable manner. It was also mentioned that vide the communication dated 13.05.2003, the Ministry of Environment and Forest had informed the Principal Chief Conservator of Forest, Meghalaya, Shillong that felling of trees, removal of barks were not permissible except in accordance with the prescription of the approved working plans/schemes and therefore requested to advise the District Council not to allow such activity. It was also mentioned that there shall be no transportation of such unauthorized barks. It was also directed that any bark being removed without proper authority should be seized as per the existing rules. The said letter dated 13.05.2003 which was issued to the Principal Chief Conservator of Forest, Meghalaya, Shillong was also forwarded to the Principal Chief Conservator of Forest and Environment Department, Assam vide a communication dated 30.04.2004. It was also mentioned in the said communication dated 30.04.2004 that all concerned DFOs be directed to take necessary action and the Regional Office, Ministry of Environment and Forest be informed of the action taken in detail so that the Ministry and the Special Investigation Team

be apprised of the situation. On the basis of these letters which have been referred to in the additional affidavit filed on 08.08.2024, it was mentioned that even as on 13.05.2003, there were specific directions that no barks should be permitted to be removed without a working plan.

29. While this matter was being taken up on 08.08.2024, this Court requested the presence of Mr. Suman Mohapatra, the Additional PCCF-cum-CHD, Forest, BTC who was the deponent of the affidavit filed on 08.08.2024. On 13.08.2024, this Court duly heard the learned counsel appearing on behalf of the petitioner as well as Shri Suman Mohapatra. Mr. Mohapatra submitted that the quantity of barks which were seized belonging to the petitioner did not commensurate with the trees which were outside the reserve forest. He further submitted that the authorities, on the basis of that and taking into account that there was no working plan which was required as per the directions of the Supreme Court seized the barks belonging to the petitioner. He further submitted that the petitioner was issued notice to appear in connection with the seized barks, but the petitioner did not appear. In the meantime, taking into account that the barks were perishable in nature, they had decomposed. Additionally, on account of ethnic violence in the BTC area sometime in the year 2013 and 2014, majority of the seized barks got destroyed. He, however, admitted that there was no confiscation proceedings initiated under Section 49 of the Regulation.

30. I have heard the learned counsels appearing on behalf of the parties and perused the materials on record. From the materials on record, it transpires that the barks which were seized are no longer in existence on account of

being perishable and destroyed due to ethnic violence. Under such circumstances, the question of issuance of directions for Transit Passes as has been sought for do not arise. The question however arises as to whether the petitioner is entitled to any form of compensation for the barks which were seized and thereupon destroyed in the custody of the respondent authorities.

31. A perusal of Section 3(iv) of the Regulation shows that forest 'produce includes' amongst others, 'bark'. Therefore, the 'Bhatgila barks' in question would come within the ambit of a 'forest produce'. The petitioner claims that the said barks in question were obtained from the pattadars of the revenue villages and there is material to substantiate the same. However, the reports which have been placed on record by the Divisional Forest Officer, Chirang Division shows that the availability of barks in the revenue villages did not commensurate with the barks which were collected by the petitioner and it was believed that such barks were obtained from the Manas Reserve Forest taking advantage that the revenue villages shared border with the Reserved Forest.

32. It is also seen that as far back as on 13.05.2003, the Ministry of Environment and Forest Government of India had categorically directed that felling of trees, removal of barks were not permissible except in accordance with the prescription of the approved working plan/scheme. In addition to that, there were also directions issued that no transportation of such unauthorized bark be allowed. Further, it was also directed that if any bark were removed without proper authority, the same should be seized as per the existing rules.

33. It is also seen that till date, the working plan is yet to be made. It is also seen from the order dated 14.02.2000 passed by the Supreme Court in the case of *T. N. Godavarman Thirumulpad vs. Union of India & Others*, reported in *(2002) 10 SCC 634* that there was an absolute prohibition of removal of dead, diseased, dying or wind- fallen trees, driftwood and grasses, etc. from national park or game sanctuary or forest and if there was any order permitting such act, the same were stayed.

34. The above analysis would therefore show that the collection of the barks in the year 2011 was also not permissible from national park, game sanctuary as well as from forest. There was a complete ban on transportation of the barks outside the State of Assam.

35. In the backdrop of the above, the pivotal question which arises is whether the barks in question collected by the petitioner and seized by the Respondents were collected from the revenue villages or the Manas Reserve Forest. The materials on record show a complete divergent stand between the parties. Additionally, if the barks were collected from the Reserved Forest, not only the same amounts to a forest offence but also came within the complete prohibition mandated by the orders of the Supreme Court referred to herein above as well as the communications issued by the Central Government and the State Government. Under such circumstances, without there being a clear picture on the legality of the barks collected by the petitioner, the question of imposing damages upon the Respondents on account of commission of a Constitutional tort in the present facts on the basis of the materials on record, do not arise.

36. This Court also finds it relevant to mention that the petitioner was issued notices as far back in the year 2014 in respect to the seized barks, but the petitioner did not care to appear. Additionally, it is also seen that the petitioner never made any attempt for release of the seized goods in terms with Section 49A of the Regulation. The said aspects clearly show that the petitioner did not make any attempt to mitigate his losses. Considering the above, in the opinion of this Court, the instant case is not a fit case to come within the ambit of imposition of damages on account of a Constitutional tort committed in favour of the petitioner.

37. Accordingly, this Court finds no merit in the instant writ petition for which the same stands dismissed.

38. Before parting, this Court observes that the dismissal of the writ petition shall not preclude the petitioner to avail remedies before the competent civil court. Further the period of pendency of the writ petition, i.e. from 07.12.2013 till the date of the judgment be excluded while computing the period of limitation.

JUDGE

Comparing Assistant