

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 12126 OF 2022

The Authorized Officer-cum-Asst. Petitioners
Conservator of Forests, Balasore and
another

Mr. Swayambhu Mishra,
Additional Standing Counsel
-versus-

Kuna Sahu Opp. Party
Mr. Rabinarayan Nayak, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.09.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 16th April, 2022 (Annexure-4) passed in FAO No. 63 of 2021 filed under Section 56(2-e) of the Orissa Forest Act, 1972, whereby learned District Judge, Balasore while allowing the appeal set aside the order dated 30th October, 2021 passed by the Authorized Officer-cum-Assistant Conservator of Forests, Balasore Wildlife Division, Balasore (Petitioner No.1) in O.R. Case No.16^s of 2021-22.
3. Mr. Mishra, learned Additional Standing Counsel submits that on 10th July, 2021 at about 1.00 P.M., when the Range Officer, Soro (W.L.), Range and her staff were on patrolling duty, they seized the vehicle of Opposite Party bearing Registration No.OD-01-AB-9922 (Mahindra Pick-Up Van) loaded with split mix fire wood of Karanja and Radhachuda species on Kupari-Agarpada road near Kupari Ambika Chhaka. When the vehicle

was intercepted, the driver of the vehicle managed to flee from the spot. Accordingly, U.D. Case was registered by the Range Officer vide U.D. Case No.04 of 2021-22 and the vehicle was seized. A seizure list was prepared by the Forest Guard, Kupari Beat and ultimately confiscation proceeding in O.R. Case No.16^s of 2021-22 was initiated as per the provisions of Section 56 of the Odisha Forest Act, 1972 (for short 'the Act'). On being noticed, the Opposite Party appeared and filed his objection stating that the split fire wood were the remains of the uprooted and fallen trees during the last cyclone 'Yash' of the private land of the Petitioner, i.e. Plot Nos.1885-1986 of Khata Nos.761/745v and 781/1221 and removed for cooking Prasad in Sunya Mandap. The Authorized Officer finding that fire wood being forest produce was being transported without valid timber transit permit, directed to initiate a confiscation proceeding and confiscated the vehicle as well as firewood vide order dated 30th October, 2021. Assailing the same, the Opposite Party preferred FAO No. 63 of 2021 before learned District Judge, Balasore, who vide his order dated 16th April, 2022 under Annexure-4 erroneously allowed the appeal holding that transportation of forest produce in the vehicle of Opposite Party on the alleged date of detention cannot constitute a forest offence in violation of Rules-4, 12 and 14 of the Orissa Timber and other Forest Produce Transit Rules, 1980 (for short 'the Rules'). The Authorized Officer being aggrieved by the said order has filed this writ petition. It is submitted by Mr. Mishra, learned ASC that the vehicle was loaded with splitted mix fire wood, which were forest produce within the meaning of Section 2(g)(i) of the Act.

However, Rule 5 of Rules provides for cases in which permit is not required. Rule 5(1)(h) provides that no transit permit is required for firewood not exceeding one head load. As the firewood seized exceeded one head load, a transit permit was essential for transportation of firewood in the said vehicle even though it is held that firewood were being transported from the private land of Opposite Party. He, further, submits that there was no hammer mark on the split firewood, which clearly connote that there was no joint verification before transportation of those forest produce. This material aspect was lost sight of by learned District Judge, Balasore while adjudicating the matter. He, therefore, prays for setting aside the impugned order and to confirm the order passed by the Authorized Officer.

4. Mr. Nayak, learned counsel for the Opposite Party, however, without raising any objection to the aforesaid factual aspect of the case, submitted that a transit permit is necessary only when the fire wood is being transported from the forest area. In the instant case, the firewood were admittedly being transported from the private land of Opposite Party. Thus, transit permit is not required for such removal. Further, the prosecution in order to establish the offence against the Opposite Party has to establish that permit is required for removal of fire wood from the private land of Opposite Party, but it miserably failed to establish that removal of fire wood without valid transit permit would constitute an offence. In support of his case, he replied upon the decision in the case of *N.V. Gopalaswamy –v- Assistant Conservator of*

Forests-cum-Authorized Officer, Nawarangpur Division and another, reported in 1990 (II) OLR 400, which reads as under:

“4. The above apart, there are provisions in the Rules to hold that fire-wood has to be regarded as forest produce for the purpose of obtaining transit permit visualised by Rule 4. We have said so because : (1) The expression 'minor forest "produce" has been" defined in Rule 2(1)(h) of the Rules to mean "forest produce other than timber, fire-wood, charcoal and bamboos". This indicates that forest produce includes fire-wood. (2) While dealing with the question regarding cases in which permit shall not be required, Rule 5 states that no permit shall be required to cover transit of forest produce, inter alia, in the case of fire-wood not exceeding one headload, vide Clause (h) of Sub-rule (1). This would first show that as per Rule 5 fire-wood is a forest produce, and secondly transit permit is necessary in those cases where the quantity to be transported is more than one headload. (3) Sub-rule (8) of Rule 7 under the heading" Application for permit and order thereon" shows that such an application is necessary for removal of fire-wood from private holdings indicating thereby that fire-wood would be forest produce inasmuch as Rule 4 of the Rules requires transit permit for transit of forest produce alone. This apart, a reference to the Schedule of Rate for Forest Produce in Orissa Rules, 1977 shows that rates have been proved for fire-wood also as per Schedule II-C which would indicate that as per these Rules fire-wood has been taken to be forest produce.

5. Because of all the above, we have no hesitation in concluding that fire-wood is a forest produce. The next question for examination is as to when transit permit is required to transport fire-wood from one place to another. Though Rule 4 of the Rules has been couched in wide language which would indicate as if transit permit would be needed whenever fire wood is sought to be transported by land; rail or water, it would seem that such permit would be needed only when transport is involved from forest area to areas located outside it. We have come to this conclusion for these reasons:

(1) The definition of fire-wood, as noted above as flowing from what has been stated in Sub-clause (a) of Clause (ii) of Section 2(g) of the Act, would show that fire-wood would be a "forest produce" when it is found in or brought from a forest. This shows that fire-wood would be

a forest pronounce for the purpose of transit permit only when it is being brought from a forest.

(2) Rule 5(1)(h) of the Rules has stated that no transit permit shall be required in case of fire-wood if the same does not exceed one head-load. This would indicate that carrying of head-load of fire-wood from forest was in mind of the rule-making authority. This transport could not have been from places outside the forest area."

(3) It is common knowledge that when fire-wood is purchased from market for domestic purpose and the same is transported from the market to one's house, no transit permit is required. Indeed, Rules 5(1)(e) of the Rules exempts from the requirement of obtaining transit permit in some cases where the forest produce is needed for bona fide "domestic use".

He, therefore, submits that no transit permit is required for transportation of fire woods from the private land of Opposite Party. He, therefore, prays for dismissal of writ petition.

5. Upon hearing learned counsel for the parties and on perusal of the materials on record including the case law cited, it is apparent that the vehicle of Opposite Party was seized when it was transporting five quintals of firewood removed from his private land. There is no material on record to show that firewood were removed from any forest area. In view of the discussion made above and the ratio decided in the case of **N.V. Gopalaswamy** (supra), it is clear that a transit permit is required when more than one head load of firewood are being transported from the forest area. Although Rule 5(1)(h) of the Rules provides that no transit permit is required if a head load of fire wood is being transported, but in view of the ratio decided in the case of **N.V. Gopalaswamy** (supra), makes it crystal clear that when firewood are being transported from a private land, there would be no necessity to make an application under the Rules for grant of

Transit Permit for its transportation. When the application is not contemplated for transportation of firewood from a private land, the question of joint verification or hammer mark on the seized firewood does not arise at all. It appears from the impugned order under Annexure-4 that learned appellate Court has vividly discussed the rival contentions of the parties and interpreted the law in its proper prospective. As such, I find no infirmity in the impugned order. Accordingly, the writ petition being devoid of any merit stands dismissed.

6. The vehicle under seizure shall be released in favour of Opposite Party forthwith, if its detention is not required in any other offence.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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