

State of Assam and Others Vs Nakul Kumar Das and Others

Court: Gauhati High Court

Date of Decision: Sept. 17, 1998

Acts Referred: Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 " Rule 22, 24
Constitution of India, 1950 " Article 14, 226

Citation: (1998) 4 GLT 76

Hon'ble Judges: P.G. Agarwal, J; A.K. Patnaik, J

Bench: Division Bench

Advocate: B.P. Bora, G.A, for the Appellant; B. Devi, for the Respondent

Judgement

A.K. Patnaik, J.

This is an appeal against the judgment and order dated 5.12.97 passed by the learned Single Judge in a writ petition numbered as Civil Rule No. 4835/97.

2. The facts briefly are that an auction for sale of some sal fire-wood was held by the Forest Range Officer, Bandapara Range on

10.12.95, 11.12.95 and 21.12.95 and the writ Petitioners amongst others participated in the said auction. The Petitioner No. 1's bid of Rs. 1005/-

for 20 cu.m. of sal fire-wood in respect of Nampathar R.F. was found to be highest in the said auction. Similarly, the bids offered by other

Petitioners in respect of different lots were also found to be highest. Thereafter, the Forest Range Officer of Bandapara Range, addressed a letter

dated 13.2.96 to the Divisional Forest Officer, Kamrup West Division informing him that as per his instruction he had conducted the auction of sal

fire-wood against sale-notice dated 10.12.95. When no order was issued by the Divisional Forest Officer allowing the Petitioners to lift the sal fire-

wood in respect of which their bids were highest, the Petitioners moved this Court in the aforesaid Civil Rule for appropriate relief and by the

impugned judgment and order, the learned single Judge directed the Respondents in the said Civil Rule to realize the bid-money and release the

fire-wood in question in favour of the Petitioners after making enquiry. The Respondents in the said Civil Rule have filed the present writ appeal

against the said judgment and order dated 5.12.97 of the learned single Judge.

3. Mr. B.R Bora, learned Senior Government Advocate, Assam, appearing the writ Appellants, submitted that although the sal firewood in

question were cut and auctioned prior to the judgment of the Apex Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and

others. By the said judgment the Supreme Court gave an expanded meaning to the expressions "Forest" and "Forest Land" in the Forest

Conservation Act, 1980 and thereafter, inter alia, directed that prior approval of the Central Government was required for any non-forest activity

within the area of any "forest" and that all on-going activity within any forest in any State throughout country, without the prior approval of the

Central Government, must cease forthwith. In the said judgment and order, the Supreme Court further directed that there would be a complete ban

on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or

waterways. According to Mr. B.R Bora, learned Senior Government Advocate, Assam, appearing for the Appellants, the ban imposed by the

Supreme Court in the aforesaid judgment will also apply to sal fire-wood sold by public auction to the Petitioners and therefore the authorities

cannot release the sal fire-wood in question in favour of the Petitioners. Mr. Bora further submitted that in any case, under Rules 22 and 24 of the

Assam Sal of Forest Produce Coupes and Mahals Rules, 1977, (for short, "the Rules, 1977"), it was only the Divisional Forest Officer or any

other officer deputed by him not below the rank of Assistant Conservator of Forests who could hold an auction for sal of a forest produce of the

value not exceeding Rs. 1000/-. But in the instant case, the auction sal of sal fire-wood was conducted by the Forest Range Officer who was not

authorised under the Rules, 1977 to conduct the auction, and in some of the cases the value of the auction sal exceeded Rs. 1000/-. Mr. Bora

submitted that considering the fact that the auction- sal conducted by Forest Range Officer was in violation of the express provisions of Rules 22

and 24 of the Rules, 1977, no direction as such can be given by the Court to release the sal fire-wood in question said to be purchased by the

Petitioners in the auction sal.

4. Mrs. B. Devi, learned Counsel appearing for the Respondents/Avrit Petitioners, on the other hand submitted that the letter dated 13.2.96 of the

Forest Range Officer to the Divisional Forest Officer, Kamrup West Division, a copy of the same has been annexed to the writ petition as

Annexure-"C", would show that the auction sal of the sal fire-Wood in question was conducted by the Forest Range Officer, Bandapara as per

instructions of the Divisional Forest Officer and therefore the Forest Range Officer was duly authorised by the Divisional Forest Officer to conduct the auction sal.

She further submitted that in other similar cases where auction sal was conducted but the fire-wood was not released in favour of the highest

bidder, directions were given by this Court in the order dated 26.5.97 in Civil Rule No. 2234/97 to the Divisional Forest Officer, Kamrup West

Division to dispose of the representation of the highest bidder and according to information received by the Petitioner; pursuant to the said

direction of the Court, some fire-wood were released in favour of the highest bidder by the concerned authorities. She vehemently argued that in

case the Petitioners are not allowed to take delivery of the sal fire-wood for which they were the highest bidders, their rights under Article 14 of

the Constitution against discrimination will be violated. Finally, Mrs. Devi contended that the judgment of the Supreme Court in the case of T.N.

Government Thirumulpad v. Union of India and Ors. (supra), relied on by Mr. Bora, learned Senior Government Advocate, Assam, and in

particular the orders passed therein do not apply to the sal fire-wood in question which had been cut before the said judgment was delivered, and

the movement of which is confined within the North-Eastern States.

5. On a reading of the said judgment of the Supreme Court and the orders passed in the case of T.N. Government Thirumulpad v. Union of India

and Ors. (supra), we are not quite sure whether the orders passed therein prohibited the movement of any cut tress within the North Eastern

States. But we find on a reading of the provisions of Rules 22 and 24 of the Rules, 1977 that it was only the Divisional Forest Officer or any officer

not below the rank of Assistant Conservator of Forests authorised by the Divisional Forest Officer who could conduct an auction sal of a forest

produce of the value not exceeding Rs. 1000/-. In the instant case, admittedly, the auction sal had not been conducted either by the Divisional

Forest Officer or any officer of the rank of Assistant Conservator of Forests. It appears however that the Forest Range Officer, Bondapara

conducted the auction sal and the case of the Petitioners is that the Forest Range Officer conducted the auction sal as per instruction of the

Divisional Forest Officer. But under Rule 24 of the Rules, 1977, the Forest Range Officer, Bondapara Range could not be authorised by the

Divisional Forest Officer to conduct the auction sal as he was not of the rank of Assistant Conservator of Forests or above. We are therefore of

the considered opinion that the auction sal of the sal fire-wood conducted by the Forest Range Officer, Bondapara on 10.12.95 in favour of the

Petitioners was contrary to the express provisions of Rules, 22 and 24 of the Rules, 1977.

6. Once the Court holds that the auction sal was contrary to law, the Court cannot possibly direct the authorities to release the sal fire-wood m

favour of a party who has purchased the sal fire-wood in such auction sal held contrary to law because the power of the Court under Article 226

of the Constitution to issue mandamus and other directions can only be exercised in accordance with the law and no mandamus or direction can as

such be given contrary to the provisions of law. It is also the settled position of law that even where some persons have been benefitted by the

illegal act of the authorities, that cannot be ground for the Court to direct the authorities to commit another illegal act and confer similar benefit to

another person and the provisions of Article 14 of the Constitution are not applicable in such cases. However, it is for the authorities to consider

any representation that may be filed by the writ Petitioners for releasing the sal firewood in question in view of the fact that the said sal fire-wood

have already been cut and are lying with the authorities for about 3 years.

7. In the result, the impugned judgment and Order dated 5.12.97 passed by the learned Single Judge in Civil Rule No. 4835/97 is set aside and

this writ appeal is allowed with a direction that the writ Petitioners will submit their representations before the Divisional Forest Officer, Kamrup

West Division for release of said respective sal-fire wood and the Divisional Forest Officer will consider and dispose of the said representations in

accordance with law within a period of one month from the date of receipt of a certified copy of this order as well as the representations.

However, considering the entire facts circumstances of the case, the parties shall bear their own costs.