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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Your No. }

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திகதி } 18th May 2021
Date }

K.M. Susantha Ranjith
29, Karambana
Wadinagala, Ampara.

Petitioner/s

Application No: HRC/AM/60/11

Vs.

1. Lalith Gamage, District Forest Officer
District Forest Office, Anuradhapura.
2. Director General
Department of Forests
Sampathpaya, Battaramulla.
3. Divisional Secretary
Divisional Secretariat
Damana.

Respondent/s

The Petition

The Petitioner in this case has made three main allegations.

- a) That he had in possession a valid Ranabima deed and that he applied to obtain a permit to transport timber that was cut in the land granted to him and that the Respondents refused to grant him his entitled permit maliciously.

- b) That the Petitioner's timber that was prepared to be transported under a valid permit was taken in to custody by the 1st Respondent arbitrarily without any warrant or court order.
- c) That the timber so taken into custody has not been produced before Magistrate as per the Forest Ordinance.

Respondent's Reply

The Respondents had rejected all the above allegations. However, the previous recommendation report of the Commission dated 15.05.2012 had found all the allegations had been true and the rights of the Petitioner had been violated by the Respondents as per Article 12(1). In reply to the above recommendation, the 2nd Respondent made the following remarks through submission made on 31.07.2012 indexed FD/LD/01/Gen(9).

- A) Cited a list of 13 reasons as to why the 1st Respondent did not approve the permit to transport the contested timber and why the timber was taken into custody. The list of reasons included doubts as to how the Ranbima deed was obtained by the Petitioner, whether fraudulent documents would have been prepared, whether the trees cut belonged to a protected forest etc.
- B) Further stated that while it is true that the timber was not produced before court as per Section 37 of the Forest Ordinance, the 1st Respondent has acted bona fide to conduct an investigation about his preliminary observations and doubts and that stipulated time was lapsed because, relevant documents had to be examined in the pursuit of the said investigation. Moreover, the 3rd Respondent had written to the District Secretariat requesting advice on the next steps regarding the issues arisen and that there had been no arbitrariness in the said action.

Observations

I. Relevant Law and applicability to the situation

- A) **Article 12(1) of the Constitution** : allegations in the Petitioner's brief above are founded on the contention that 'equal protection of law' was denied to the Petitioner and that the alleged 'executive or administrative action' was unreasonable and arbitrary. Therefore, relevant Constitutional provision for Fundamental Rights protections is Article 12(1).
- B) **Jayawardena vs. Dharani Wijayatilleke** : Mark Fernando J held that proof of arbitrariness and unreasonableness amounts to a violation of Article 12(1). The allegations of this case also concerned the arbitrary and unreasonable action taken by the 1st Respondent.
- C) **Forest (Amendment) Act No. 65 of 2009.**

II. Observations on the submissions based on evidence and relevant Law

- A) For the allegations of not issuing an entitled permit to transport timber and taking the contested timber in to custody, it appears that as per Section 24 of

the Forest (Amendment) Act of 2009, the forest officer concerned (1st Respondent) has the right to take into custody any timber that he reasonably believes where a forest offence has been committed.

- B) Therefore, the context suggests that there seems to have reasons on the mind of the 1st Respondent to seize the timber of the Petitioner and was well within his right as provided through the Forest (Amendment) Act of 2009. Therefore, there seems to have been no violation of Fundamental Rights in this regards. The reason for the confiscation as propounded by the 2nd Respondent in his later submissions confirm this fact.
- C) And for the allegation of not producing the timber within 7 working days before the Magistrate as per Section 24 of the Act, the 2nd Respondent concedes this fact but, purports to justify it on the grounds that further investigations were necessary, that many documents had to be examined to make a formidable case against the petitioner, and that even the Director General of Presidential Investigation Unit had instructed not to release the timber until further instructions are given.
- D) There should be no reservation to any law in the country. All laws are effective under any circumstances unless otherwise exempted. Therefore, the Respondents seem to have not complied with Section 24 of the Act.
- E) However, in order to find a Fundamental Rights violation, as per rules set out in Jayawardene Vs. Dharani Wijetilleke, arbitrariness needs to be established. As per the submissions of the 2nd Respondent, he seems to suggest that the Respondents have acted bona fide and that the time had lapsed due to the investigations process.
- F) The fact that there is substantial doubt that the Petitioner has committed a serious forest offence needs to be highlighted here also.
- G) However, since every public authority that committed in public duties should comply with the legal procedures as stipulated without any reservation, there is enough ground to suggest that the 1st respondent has not followed the procedures set out in Section 24 of the Forest (Amendment) Act of 2009 to produce the confiscated timber before a Magistrate within 7 working days. An unreasonable period has lapsed without being produced before Court. Therefore, there seems to be a violation of Fundamental Rights of the Petitioner.

Conclusion

I. Basis for the conclusion

As per the observations and the applicability of the relevant laws above, following conclusion/s could be construed.

- A) The action taken by the 1st Respondent has not breached the law as stipulated under the Forest (Amendment) Act 2009 for the 1st (not issuing the permit) and 2nd (confiscating timber) allegations. Therefore, it is hereby concluded that the 1st

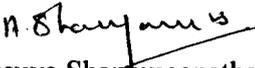
Respondent has not violated the Fundamental Rights of the Petitioner guaranteed by Article 12 (1) of the Constitution for these two counts, on balance of probabilities.

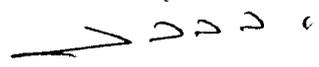
B) However, the action taken by the 1st Respondent has breached Section 24 of the Forest (Amendment) Act 2009, arbitrarily and unreasonably for the 3rd allegation (of not producing the timber within 7th working days before a Magistrate). Therefore, it is hereby concluded that this action of the 1st Respondent **has violated** the Fundamental Rights of the Petitioner guaranteed by Article 12(1) of the Constitution, on balance of probabilities.

II. Recommendation

As per the conclusion/s above, the Commission makes the following recommendations.

- A) Previous recommendation dated 22.06.2012 as delivered to the parties is hereby annulled.
- B) All three Respondents are hereby directed to take appropriate action immediately to produce the contested timber before a competent court as per the provisions of the Forest (Amendment) Act of 2009 and report to the Commission within three months from today.


Anusuya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka.


M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka.

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