
(2016) 07 OHC CK 0009
In the Orissa High Court
Case No : WP(C) No. 7403 of 2016

Baikunthanath Swain

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Orissa Forest Act, 1972 — Section 27

Orissa Timber and other Forest Produce Transit Rules, 1980 — Rule 4, Rule 5

Citation : (2017) 123 CutLT 68

Hon'ble Judges : S. Pujahari, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Pujahari, J. - Heard the learned counsel for the petitioner and the learned counsel for the State.

2. This writ petition has been filed by the petitioner challenging the order dated 10.09.2015 at Annexure-1, passed by the Authorised Officer-cum-A.C.F., Keonjhar Division, Keonjhar in O.R. Case No. 108T of 2014-15 confiscating the tractor and trolley bearing Registration Nos. OR-09-M-5261 & OR-09-M-5262 respectively which has been confirmed by the learned Addl. District Judge, Keonjhar in F.A.O. No. 2/30 of 2016/2015 vide Annexure-2, to be illegal and arbitrary.

3. It appears that the aforesaid vehicle was seized by the forest officials of Telkoi Range as the same was allegedly used in transportation of granite stone measuring 50.0 cft. from a reserve forest without required transit permit. The forest officials after seizure of the same made enquiry and holding that forest offence appears to have been committed in respect of forest produce, placed the matter fore the Authorised officer-cum-A.C.F., Keonjhar Division, Keonjhar who after making necessary enquiry held a forest offence to have been committed in respect of forest produce using the aforesaid vehicle and confiscated the vehicle along with granite stone and other articles seized vide the impugned order at

Annexure-1. The petitioner challenged such order of confiscation before the learned Addl. District Judge, Keonjhar in F.A.O. No. 2/30 of 2016/15 and the learned Addl. District Judge, Keonjhar vide order at Annexure-2 appreciating the materials on record and dispelling the contention raised on behalf of the petitioner that there was absence of knowledge or connivance in respect of commission forest offence in respect of forest produce, confirmed the order of confiscation.

4. Learned counsel appearing for the petitioner submits that even if for the sake of argument the granite stone seized in connection with the aforesaid case was forest produce having removed from forest, but the same being minor forest produce and there being no material indicating the fact that there was inter district movement of the same, no transit permit was required for transportation of the same. Therefore, there being no violation of the Orissa Timber and other Forest Produce Transit rules, 1980 (hereinafter referred to as "the Rules"), no offence was committed in respect of forest produce and as such the initiation of confiscation proceeding and the consequential order of confiscation passed against the vehicle in question is unsustainable and liable to be quashed.

5. Learned counsel for the state, on the other hand, submits that in this case since the vehicle in question was used in commission of forest offence i.e. removal of granite stone, a forest produce, from a reserve forest, an offence under Section 27 of the Orissa Forest Act, 1972 (hereinafter referred to as "the Act") was committed, the impugned order of confiscation cannot be found fault with and needs no interference in exercise of writ jurisdiction of certiorari.

6. Transportation of the forest produce seized i.e. granite stone from a forest does not attract the violation of Rule 4 of the Rules in the absence of any material on record indicating that there was inter district movement of the same, in view of the mandate of Rules 5(1)(i) of the Rules and granite stone is a minor forest produce as defined under Rule 2(h) of the Rules. To be more specific Rule 2(h) defines "Minor Forest Produce" means forest produce other than timber, fire-wood, charcoal and bamboos. Rule 4 speaks that except as provided in Rule 5 of the Rules, all forest produce in transit by land, rail or water shall be covered by a Transit Permit to be issued free of cost by the Divisional Forest Officer or by Assistant Conservator of Forests authorised by him in that behalf, and Rule 5(1) (i) speaks that no transit permit shall be required for transportation of minor forest produce within the district except lac, tassar, myrabolans, gums and resin, root of paralagaruda, sal seed, tamarind and hill brooms, subject to such limit of transport and storage without transit permit as may be notified by State Government in Official Gazette for different items. In this case there was nothing on record indicating the fact that there was inter-district movement of the granite stone seized.

7. Since in this case there was no inter district movement, so also nothing is there indicating the fact that the granite stone seized in this case was transported beyond any limit prescribed, no violation of the rules was made.

Section 27 of the Act makes the removal of forest produce an offence if committed violating any of the Rules framed under the Act. Therefore, there being no violation of any rules, no offence appears to have been committed under Section 27 of the Act also for removal of aforesaid forest produce using the vehicle of the petitioner. The Authorised Officer oblivious to the aforesaid facts and situation and also the law, initiated the confiscation proceeding and pass the impugned order at Annexure-1. the appellate Court also confirmed the same without appreciating the law in its proper perspective vide order at Annexure-2. Hence, the orders at Annexure-1 & 2 are indefeasible.

8. Hence, this writ petition stands allowed. The impugned order at Annexure-1, passed by the Authorised Officer-cum-A.C.F., Keonjhar Division, Keonjhar confiscating the tractor and trolley in question and the order of the learned Addl. District Judge, Keonjhar at Annexure-2 confirming such order of confiscation, are quashed. The vehicle in question be released forthwith.

Issue urgent certified copy as per rules.