

(1994) 01 OHC CK 0026

In the Orissa High Court

Case No : Original Jurisdiction Case No. 302 of 1991

Gopinath Sahoo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Orissa Forest Act, 1972 — Section 2, 56

Citation : (1994) 1 OLR 276

Hon'ble Judges : G.T. Nanavati, Acting C.J.; K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : B. Senapati, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.T. Nanavati, A.C.J.

1. In this petition filed under Arts. 226 and 227 of the Constitution, the petitioner, the owner of the motor truck bearing registration No. ORP 1346, has challenged the order of confiscation passed by the Authorised Officer-cum-Assistant Conservator of Forests, Ghumsur South Division, u/s 56 of the Orissa Forest Act, 1972. He has also challenged the order passed by the Court of District Judge, Ganjam, in the appeal filed against the above order.

2. On 21-6-1977 at about 2-15 a. m., the mobile party of the Government of Orissa attached to the office of the Divisional Forest Officer, Bhanjanagar, noticed to above motor truck proceeding in the direction of Digapahandi from the side of Godahada dam project. It was found to be carrying 5000 pieces of green salia and pananali bamboos. On demand, neither the driver Nimai Charan Panda, nor the persons found in the truck could produce any pass or permit authorising them to carry forest produce in the said truck. The forest officials, therefore, seized the said truck along with the forest produce on a reasonable belief that in respect of the aforesaid forest produce, a forest offence has been committed.

The Authorised Officer then initiated proceedings u/s 56 of the Act against (1) Gopinath Sahoo, the owner of the truck ; (2) Nimai Charan Panda, the driver of the truck ; (3) Dandapani Das, the cleaner of the truck ; and (4) Padma Charan Panigrahi.

3. The defence of the petitioner before the Authorised Officer was that he had not authorised the driver to utilise his truck for such an act and that the forest produce was being transported in the truck without his knowledge and consent. On basis of the evidence led before him, the Authorised Officer came to the "conclusion that it was not correct to say that Gopinath- was absent when the vehicle was seized and that the forest Produce was being transported without his knowledge or consent. He further held that the evidence on record proves beyond doubt that the truck bearing registration No. ORP 1346 was carrying 5000 Nos. of illicit green salia and pananali bamboos covered under a tarpaulin without a- valid permit and with the active connivance of the owner of the truck who was present at the time of the seizure He, therefore, ordered confiscation of the truck along with the forest produce. The District Judge concurred with the said finding. A contention was raised before him that bamboos were not forest produce. But the appellate authority rejected that contention on the ground that the definition of the expression "forest produce" is wide enough to include even bamboos. He, therefore, dismissed the appeal.

4. What is contended by the learned counsel for the petitioner is that bamboos cannot be regarded as forest produce, and, therefore, the order passed by the Authorised Officer should be regarded as illegal. In our opinion, there is no substance in the contention. "Forest produce" is defined by Section 2(g) of the Act as under :

"2(q). forest produce" includes-

(i) the following whether found in, or brought from a forest or not, that is to say-

(a) timber, charcoal, caoutchous, catechu, wood-oil, resin, natural varnish, bark, Tussar Cocoon, lac, gums, roots of Patal Garuda, mahua flowers, mahua seeds, myrabolams, kendu leaves, sandalwood, tamarind, hilt-broom, sial leaves, sial fibres, sal seeds .

(b) wild animals and wild birds, skins, tusks, horns, bones and all other parts or produce of wild life ; and

(c) such other produce as may be notified by the State Government ; and

(ii) the following when found in or brought from a forest, that is to say-

(a) trees and leaves, flowers and fruits and all other parts or produce of tree not hereinbefore mentioned ;

(b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants;

(c) honey, wax and arrowroot;

(d) peat, surface oil, rock, sand and minerals including limestone, laterite, mineral oils and all products of mines or quarries);"

Trees when found in or brought from the forest are included in the definition of "forest produce". According to the definition, "tree" includes palms; bamboos, stumps, brushwood and canes, Thus, the bamboos brought from the forest must be regarded as forest produce. The learned District Judge was, therefore, right in coming to the conclusion that bamboos which were seized were forest produce as contemplated by the Act.

5. It was next contended that the vehicle in question was used in the commission of the forest offence without the knowledge and connivance of the petitioner and his driver and, therefore, the vehicle should not have been ordered to be confiscated. The Authorised Officer and the learned District Judge have recorded a clear finding on this point after appreciating the materials on record. It is found, as a matter of fact, that the owner of the truck was present when it was seized by the forest officials. As the findings recorded by the Authorised Officer and the learned District Judge are supported by credible evidence, we will have to proceed on the basis that the vehicle in question was used in commission of the forest offence to the knowledge of the petitioner and his driver. The Authorised Officer was, therefore, justified in passing an order of confiscation.

6. It was then submitted that in the peculiar facts and circumstances of this case, the Authorised Officer should have given an option to the petitioner to pay fine in lieu of confiscation. In support of his submission, the learned counsel has relied upon two decisions of this Court in (1) State of Orissa v. Santosh Kumar Behera 56 (1983) CLT 469 : and (2) Gurudev Singh Rai Vs. Authorised Officer-cum-Asst. Conservator of Forests and Another, , Interpreting the relevant provision, this Court has held that it is permissible to pass an order for payment of fine in lieu of confiscation. We find that the truck involved in the present case is of 1961 model. It is the only source of income of the petitioner and his family, The value of the forest produce illegally carried in the truck was about Rs. 6,000/- only. For these reasons, we are of the view that if the petitioner is ordered to pay a fine of Rs. 15,000/- in lieu of confiscation of his truck, it will serve the ends of justice.

7. We, therefore, partly allow this petition. The order passed by the learned District Judge confirming the order of the Authorised Officer is modified to the extent that the petitioner is given an option to pay a fine of Rs, 15,000/- in lieu of confiscation of his truck. The rule is made absolute accordingly with no order as to costs.

K.C. Jagadeb Roy, J.

I agree.