
(2006) 05 JH CK 0093

In the Jharkhand High Court

Case No : Writ Petition (C) No. 671 of 2006

Kanchan Agrawala

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Forest Act, 1927 — Section 33, 52

Citation : (2006) 3 JCR 299

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.S. Anwar Altaf Hussain, A. Ahmad and N. Hoda, for the Appellant;
M.K. Laik, Senior Standing Counsel, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order dated 20.8.2005 passed by Divisional Forest Officer-cum-Confiscating Authority, Ramgarh, Hazaribagh whereby he has passed order for confiscation of the vehicle of the petitioner for committing forest offence by transporting 250 gunny bags of soft coal in the said vehicle.

2. This case has a chequered history which will show as to how the confiscation proceeding continued for five years.

3. On 30.8.2001 the vehicle (truck No. BPY 7482) owned and possessed by the petitioner was seized along with 250 gunny bags of soft coal. The Forest Officer, who seized the vehicle, lodged a first information report and also submitted report that the soft coal was procured from the forestland. On the basis of report a confiscation proceeding was initiated for the alleged commission of offence u/s 52 of the Indian Forest Act being confiscation case No. 59 of 2001. The petitioner moved the Chief Judicial Magistrate for release of the vehicle but the prayer was rejected on 7.9.2001 on the ground of pendency of confiscation proceeding. The Confiscating Authority, namely, the Divisional Forest Officer, Ramgarh, finally vide his order dated 14.3.2002, confiscated the vehicle on being satisfied that forest offence was committed by the said vehicle.

4. The petitioner, aggrieved by the said order, preferred appeal before the Deputy Commissioner, Hazaribagh who is the Appellate Authority and the same was registered as appeal No. 21/2002. The said appeal was heard by the Deputy Commissioner on 7.6.2002 and order was reserved. When the Appellate Authority did not pass final order in the appeal and the same was kept reserved for more than one and half years, petitioner filed writ application being WPC No. 1505 of 2004. The said writ application was disposed of by this Court on 17.3.2004 with a direction to the Appellate Authority to dispose of the appeal within three weeks. When the order was not complied with, the petitioner filed contempt petition being Contempt (civil) Petition No. 697 of 2004. It was only after the contempt petition was filed, a show cause was filed by the appellate authority stating that the appeal was disposed of on 1.10.2004 and the case was remanded back to the Confiscating Authority for passing fresh order within ten days. Again, after remand of the case when the Confiscating Authority did not dispose of the case within the specified time, the petitioner had no alternative but to file another writ application being WPC No. 1380 of 2005 on 10.3.2005 for release of the vehicle which was seized and lying with the police since 30.8.2001. The writ application was disposed of on 29.3.2005 directing the Confiscating Authority to release the vehicle on furnishing bank guarantee by the petitioner. However, since the petitioner could not furnish bank guarantee the vehicle was not released.

5. As noticed above, the appeal filed before the Appellate Authority, namely, the Deputy Commissioner, Hazaribagh was disposed of on 1.10.2004 and the case was remanded to Confiscating Authority for re-consideration on the following points:

- i) Whether the truck owner was present at the time of incident?
- ii) Whether the forest was notified forest u/s 33 of the Forest Act?

6. The Appellate Authority, by his order dated 1.10.2004, ordered the Confiscating Authority to dispose of the case within ten days. In spite of the aforesaid order the confiscation case was not disposed of within ten days, rather, it was disposed of only after about a year i.e. on 20.8.2005, which is impugned in this case. In this way about five years have been consumed for deciding the forest case by the Confiscating Authority.

7. As noticed above, although in the remand order there was specific direction for reconsideration of the aforementioned points but from perusal of the impugned order it appears that these points have not been reconsidered and no finding has been recorded by the Confiscating Authority. In the impugned order the Confiscating Authority discussed only back history of the case in about two pages and, thereafter, gave his finding in five lines holding that a forest offence was committed.

8. It is well settled that the Confiscating Authority, before passing order of confiscation of the vehicle on the charges of commission of forest offence, must

record a finding that the owner of the vehicle had knowledge about the commission of the offence and he was directly involved in committing such offence. Since these findings have not been recorded, the matter again needs to be remanded back to the Confiscating Authority. But, in the facts and circumstances of the case that more than five years have passed since the vehicle was seized and is lying in the custody of the police, I am of the view that order of confiscation of 250 gunny bags of soft coal will meet the ends of justice. The impugned order dated 20.8.2005 is modified to the extent that the articles loaded in the truck shall be confiscated but the truck in question shall be released in favour of the petitioner.

9. With the aforesaid observation and direction, this writ application is disposed of.