

(2008) 03 OHC CK 0018
In the Orissa High Court
Case No : Writ Petition (C) No. 3139 of 2002

Kunja Swain

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (2008) CLT 553 Supp : (2008) 1 OLR 806 Supp : (2008) OLR 553 Supp

Hon'ble Judges : Sanju Panda, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Asok Mohanty, H. Tripathy, P. Sahu and P.K. Mohanty, D.B. Das, for the Appellant; Sankarsan Rath, for O.Ps. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has prayed for issuance of a writ declaring the seizure of the vehicle of the Petitioner u/s 29 of the State Financial Corporation Act as illegal, mala fide and arbitrary and for a direction to transfer the vehicle in question purchased by him in auction to his name.

2. This writ petition was filed on 9.9.2002 and on 13.9.2002 when this writ petition was taken up, an interim order was passed in Misc. Case No. 2268 of 2002 to the effect that the sale of Tata Bus bearing registration number OR-13-4778 pursuant to the sale notice dated 9.9.2002 of the O.S.F.C. published in the Prajatantra shall remain stayed and the value of the said vehicle would not be impaired in any manner by damage or removal of any part therefrom. Later on, vide order dated 30.9.2002 Anr. interim order was passed to the effect that the Petitioner would approach the authorities under the Motor Vehicle Taxation Act for declaring the vehicle as off-road since 6.9.2002 for the purpose of exemption/concession from tax and the permit, if any, issued in respect of the said vehicle in favour of the Petitioner would not be transferred to any other

person. On 9.1.2003 a fresh order was passed in Misc. Case No. 2851 of 2002 directing the O.S.F.C. to release the vehicle in question i.e. OR-13-4778 in favour of the Petitioner on his furnishing bank guarantee to the tune of Rs. 1.5 lakhs to the satisfaction of the Branch Manager, O.S.F.C, Puri Branch and the bank guarantee so furnished shall be renewed from time to time so long as the writ petition remained pending in this Court.

3. Now we come to the brief history of the matter which is as under:

One Jagadish Acharya, son of Krushna Chandra Acharya of Biragovindpur of district Puri was sanctioned with a term loan of Rs. 6,40,000.00 on 6.6.1996 and additional loan of Rs. 40,000.00 on 6.2.1997 by the Orissa State Financial Corporation (hereinafter referred to as "O.S.F.C.") and he purchased a Tata Bus by availing the said loan which was registered with the Registering Authority-cum-Regional Transport Officer, Puri bearing registration number OR-14-4778. As he defaulted in repayment of the loan instalments, the officers of the Orissa State Financial Corporation had gone on 26.2.2002 to seize the vehicle and found that its engine and chasis were missing and the naked body with some assets were there which were taken into possession and inventory was prepared as under:

1. Fabricated bus body including seats (Royal Deluxe) kept in dismantled condition supported by concrete blocks.
2. Front axil fitted with two (2) Nos. of MRF tyres and 2 (two) sets of left-springs.
3. Rear axil with housing fitted with 2 (two) Nos. of tyres and (MRF make and 1 (one) good year make with 2 (two) sets of leaf-springs (Resoled tyres).

The above parts were kept inside the concrete block-making unit located in village Badahat Sakhigopal. The vehicle specifications and the owner's name written on the body of the vehicle have been tampered.

4. The Branch Manager, O.S.F.C, Puri Branch lodged FIR at Satyabadi Police station mentioning the fact and requesting to get the remaining parts of the vehicle recovered from Shri Acharya. On 7.3.2002, the Corporation also sent a registered letter to Shri Acharya, the borrower, requiring him to restore the missing items. However, an advertisement was issued for reselling the vehicle through a sale notice published in the daily newspaper the Prajatantra dated 29.5.2002. It appears that a wrong vehicle number and wrong make was mentioned therein which is clear from the perusal of SI. No. 83 of advertisement which is reproduced as under:

Puri Branch

XXX XXX XXX XXX

83 (a). OR-13-4718 (c) a.1. Bus lying at Badahat, Puri (d) Rs. 30,000/-

5. In fact the number of the vehicle in question was OR-13-4778 and not 4718

and it was a Tata Bus and not Ashok Leyland vehicle. Any how the Petitioner participated in the sale and ultimately bid was finalized at Rs. 1,25,000/- but thereafter the Corporation again seized the vehicle bearing number OR-13-4778 (Tata) Bus on 6.9.2002 and found the engine and chasis also and an inventory was made of the vehicle on the date of seizure which is quoted as under:

Inventory list of the vehicle bearing No. OR-13-4778 Tata (Bus) of Shri Jagadish Chandra Acharya, At/P.O. Biragobindapur, Dist. Puri.

Date of seizure - 6.9.2002

Engine No. 694 D 28 KTQ 151695

Chasis No. 35935 KTQ 015287

Engine fitted with self started Dynamo, Battery one no. indigenous make, 56 (fifty-six) seats with standard condition, Body with front glass and window pan glass in standard condition.

Front tyre (left) 1 one no MRF Nylon running condition

Front Tyre (right) 1 one No. MRF Nylon No. 30666073133 (funning condition)

Rear Tyres left 2 two Nos. MRF make resoled.

Rear Tyres, right 2 two Nos. MRF make resoled.

Tools: Jack 1 one no, wheel wrench 2 two Nos. Jack rod 1 one no. (illegible) Bucket 1 one No. 9" speaker fitted 3 three Nos. stephene, resoled 1 one no MRF make

Persons Present:

1. Sri D.K. Pradhan, D.M.(P), Cuttack Recovery Zone, Sd.
2. ShriP.K.Mohanty, D.M.(P) Sd.
3. ShriM.Tripathy, A.M. (L) Sd.
4. ShriS.P.Satapathy, Sr. Asst. Sd.
5. ShriJ.K.Patra, Asst. Sd.
6. ShriS.K.Sahanee, Jr. Asst. Sd.
7. ShriPahaliNayak, Driver Sd.

Received by Central Garage Sd. 6.9.2002 S.K.Swain Sd. Ramesh Digal.

6. From the inventory, it is found that against the Engine and Chasis numbers, a note was later written to the effect "available out side the body of the bus". However, this was not written at the time of seizure as in the carbon copy also it has been added by pen. Thereafter, the OSFC issued Anr. sale notice in the same newspaper dated 10.9.2002 for sale of the engine and chasis of the vehicle in

question.

7. Dispute has arisen as to whether the vehicle was sold initially vide earlier advertisement dated 29.5.2002 along with the engine and chasis or it was without the same. The plea of the Petitioner was that it was sold along with the Engine and chasis but the opposite parties have denied it showing their recovery inventory as well as the FIR lodged at the police station. Therefore, a disputed question of fact as to whether the vehicle was sold along with the engine and chasis or without the same has arisen which cannot be determined by this Court in exercise of jurisdiction conferred on it under Article 226 of the Constitution. Therefore, we are not inclined to pass any order in such situation. However, this will not debar the parties to arrive at some amicable settlement if they desire to do so. Since during the pendency of the writ petition, interim order was passed as mentioned above, it is directed that in case the parties arrive at an amicable settlement, that may be done but in case that is not done, the Petitioner shall hand over the vehicle keeping the same in the position which was existing at the time of passing of the interim order dated 13.9.2002. However, in case he fails to hand over possession of the same, it will be open for the opposite parties to encash the bank guarantee furnished in favour of them.

The writ petition is accordingly disposed of.

Sanju Panda, J.

8. I agree.