
(2013) 07 JH CK 0030
In the Jharkhand High Court
Case No : W.P.C. No. 1761 of 2013

Mukund Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Forest Act, 1927 — Section 52, 52(4), 52(A)

Citation : (2013) 07 JH CK 0030

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Shankar Lal Agarwal, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the petitioner as well as counsel for the State. By the order dated 10.11.2009 passed by the Divisional Forest Officer, Dhalbhum Forest Division, Jamshedpur in Confiscation Case No. 04 of 2009 u/s 52 of the Indian Forest Act, 1927 (as amended by Bihar Act 9 of 1990) two dumpers of the petitioner were seized by the police in connection with the alleged forest offences.

2. However, according to the petitioner in the confiscation proceedings which were initiated by the respondent no. 2-Divisional Forest Officer, Dhalbhum, notices were issued upon four persons, who were not the petitioner. Confiscation Case No. 04 of 2009 was concluded against the said persons and seized commodities as well as trucks and dumpers were confiscated. It is submitted by learned counsel for the petitioner that petitioner was never noticed though he was the owner of the vehicles in question. Three notices, however preferred an appeal being Confiscation Appeal No. 116 of 2011-12 before the Appellate Authority cum Deputy Commissioner, East Singhbhum. That appeal was also dismissed by order dated 20.9.2012, which is also under challenge in the instant writ application. The sole ground on behalf of the petitioner to challenge the impugned orders is that he was the owner of the two dumpers in question but he

was never noticed and the proceeding was concluded in his absence without complying with the Principle of Natural Justice as also the statutory requirement of the law u/s 52(4) of the Bihar Amendment Act, 1990 of the Indian Forest Act, 1927.

3. I have heard counsel for the parties and gone through the relevant materials on record including the impugned order. It is useful to refer section 52(A) which provides appeal against the order of confiscation:-

Section 52A. Appeal against the order of confiscation.-Any person aggrieved by an order of confiscation may, within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, along with the certified copy of order of confiscation to the District Magistrate (hereinafter referred to as Appellate Authority) of the District in which the forest produce has been seized.

Explanation.-(1) The time required for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-section.

(2) The appellate Authority referred to in section 52A, may, where no appeal has been preferred before him, "suo motu" within thirty days of date of receipt of copy of order of confiscation by him, and all on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any other person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid as may waive the notice or may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo motu" action, to the authorized officer.

(4) The Appellate Authority may pass such order of "interim" nature for custody, preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority, having regard to the nature of the case of the complexities involved, may permit parties to the appeal to be represented by their respective legal practitioners.

(6) In the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any

agent duly authorized in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification of order of confiscation:

Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the authorized officer, and may also allow parties to file affidavits for asserting or refuting any fact that may arise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order or an order of consequential nature, shall be sent to the authorized officer for compliance or for passing any order appropriate in conformity with the order of Appellate Authority.

4. A perusal of the instant provision will show that not only persons who has been noticed in the confiscation proceeding but any person who is aggrieved by an order of confiscation may within thirty days of the order or thirty days of knowledge of such order prefer an appeal before Appellate Authority. On such appeal, the Appellate Authority is enjoined to consider the issues in appellate proceeding in accordance with law after hearing the parties.

5. In these circumstances, therefore, it appears that the petitioner is not without remedy in such circumstances, as he has now knowledge of the confiscation order dated 10.11.2009

6. In that view of the matter, the writ petition is disposed of without going into the merit of the claim of the petitioner by permitting him to approach the Appellate Authority under the amended Bihar Act 9 of 1990 of the Indian Forest Act, 1927 to prefer an appeal within a period of three weeks from today. In case such an appeal is preferred before the Appellate Authority, he shall consider the question of limitation sympathetically in view of the fact that he had not been noticed earlier in the confiscation case and after passing of the appellate order the petitioner has been pursuing the writ application. The Appellate Authority, thereafter, shall consider the appeal of the petitioner in accordance with law.

7. It is submitted by learned counsel for the petitioner that petitioner's vehicles are still in the custody and he may also be allowed to pray for seeking release of the confiscated vehicles in question subject to the compliance of necessary formalities in view of the law laid down by the Hon'ble Supreme Court of India in such circumstances.

8. Petitioner is always at liberty to seek release of his confiscated vehicle, which may be considered in accordance with law. The writ petition is disposed of in the aforesaid term.