
(2014) 02 OHC CK 0023
In the Orissa High Court
Case No : Writ Petition (C) No. 11245 of 2012

Purna Chandra Parida

APPELLANT

Vs

District Judge, Bhadrak and Another

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Orissa Forest Act, 1972 — Section 2(g)(i) 2(g)(ii) 56

Citation : AIR 2014 Ori 62 : (2014) 117 CLT 617 : (2014) 4 FLT 682 : (2014) 1 ILR 653 : (2014) 1 OLR 725

Hon'ble Judges : A.K. Goel, C.J;C.R. Dash, J;A.K. Rath, J

Bench : Full Bench

Advocate : Sarat Kumar Behera, for the Appellant; Bishnu Prasad Pradhan, Addl. Govt. Advocate, for the Respondent

Judgement

C.R. Dash, J.—Whether the decision rendered by this Court in two of the earlier cases, i.e., Smt. M. Vijayalaxmi Vs. Divisional Forest Officer-cum-Authorized Officer, Bhadrak (WL) Division and Another, and Ashok Kumar Sahoo Vs. Forest Range Officer, Nayagarh and Another, , is correct in view of the Resolution of the Government in Forest and Environment Department dated 27th September, 2002, is the question that arises for determination in the present Reference. One Tata Ace bearing Registration No. OR-01-N-2201 was intercepted by the Mobile Staff of Wild Life Range at Dahanigadia. The vehicle was found loaded with 180 bundles of dry Sal leaf pressed plates. On demand, the driver of the vehicle could not produce any document regarding ownership over the said product nor could he produce the T.T. Permit authorizing transportation of the same. The vehicle was accordingly seized by the forest officials u/s 56 of the Orissa Forest Act, 1972 ("the Act" for short) and a Confiscation Proceeding was initiated on the allegation of commission of forest offence. The Authorized Officer, in the Confiscation Proceeding, directed for confiscation of the vehicle as well as the forest produce seized from the said vehicle. The matter was carried in appeal to the concerned District Judge, but the aforesaid order of confiscation was confirmed in the appeal obliging the petitioner to prefer the present writ

application.

2. Before the Division Bench, reliance was placed on the decisions of this Court in the case of Gangadhar Sahu vs. State of Orissa and others, 32 (1990) O.J.D. 565 (Civil), Muralidhar Sahu and Others Vs. State of Orissa and Others, Chittaranjan Sahu and Others Vs. State of Orissa and Others, Smt. M. Vijayalaxmi Vs. Divisional Forest Officer-cum-Authorized Officer, Bhadrak (WL) Division and Another, and Ashok Kumar Sahoo Vs. Forest Range Officer, Nayagarh and Another, . Learned counsel for the State also pressed into service Resolution of the Govt. of Orissa in Forest and Environment Department dated 27th September, 2002. The Division Bench, referring the matter, found that aforesaid Resolution of the Government dated 27th September, 2002 had been taken into consideration in the case of Chittaranjan Sahu and others (supra), but in the latter decisions in the case of M. Vijayalaxmi (supra) and Sri Ashok Kumar Sahoo (supra) this Court had not taken into consideration the aforesaid Resolution of the Government dated 27th September, 2002. In view of such fact, the Division Bench doubted correctness of the decisions rendered in the case of M. Vijayalaxmi (supra) and Sri Ashok Kumar Sahoo (supra), and referred the matter to the larger Bench to decide correctness of the view expressed in the aforesaid two judgments, especially with reference to the Resolution of the Forest and Environment Department, Govt. of Orissa dated 27th September, 2002.

3. We have heard Mr. C.A. Rao, learned Senior Counsel appearing for the petitioner and Mr. B.P. Pradhan, learned Addl. Govt. Advocate.

4. "Policy for Control and Registration of Removal of Sal Leaves from the Degraded Sal Forests" is the heading of Resolution of the Government of Orissa in Forest and Environment Department dated 27th September, 2002. The very heading speaks about the objects and reasons behind the aforesaid policy, which aims at control and registration of removal of Sal leaves from the degraded Sal forests to check over-exploitation of the degraded Sal forests for Sal leaves, for the interest of survival of the forests, for sustainability of the livelihood of the communities depending on Sal leaf trays and to regulate removal of Sal leaves from the degraded forests in a manner so as to contain it within the Silviculturally permissible limits. Clauses 1, 2, 3 and 4 of the Resolution outline the purpose and objects for which the policy has been formulated. We are concerned with that part of the Resolution in Clauses 6.8 and 6.9, which speak about permissible limit of storage and requirement of T.T. permit for transportation of Sal leaf trays, plates and cups, etc. Clauses 6.8 and 6.9 read as follows:-

6.8. The traders/exporters who purchase Sal leaf plates and cups from a procurer can get permits from the D.F.O. or an Authorised Officer in lieu of the permits handed over by the procurer to him by surrendering the same to the D.F.O. with their application for T.T. permit.

6.9. In order that the local households can possess small quantities of Sal leaves,

plates, cups etc. for their genuine domestic use, no permit for storage or transportation will be required for possession or transit up to a limit of 6 kg (5 chaka). But any person intending to store and transport Sal Leaf or Sal Plates/Cups beyond this quantity will require a storage transit permit for the purpose.

5. Clause 6.5, which speaks about requirement of transit permit under Rule 7 of the Orissa Timber and Other Forest Produce Transit Rules, 1980 ("O.T.T. Rules" for short), reads as follows:-

6.5. The transportation of Sal Leaves and Leaf Plates and cups made out of Sal leaves, both within the state and to outside the State, shall be covered by a Forest Department Transit Permit to be issued free of cost by the D.F.O. or by the Range Officer authorized by him in that behalf. Persons desiring to transport Sal Leaf plates and Cups shall apply for transit permit to the Forest Officer having jurisdiction as per the procedure laid down in Rule-7 of the Orissa Timber and Other Forest Produce Transit Rules, 1980.

From the aforesaid provisions, it is clear that any person desiring to transport Sal leaf plates and cups has to apply for transit permit to the Forest Officer having jurisdiction as per the procedure laid down in Rule 7 of the O.T.T. Rules. The provision in the Resolution itself is, therefore, clear to the effect that it is subordinate to the statutory provisions contained in O.T.T. Rules. It is also admitted at the Bar that the aforesaid Resolution cannot override any of the statutory provisions enshrined in either the Orissa Forest Act, 1972 or the O.T.T. Rules, 1980. That is also the settled law on the point, for which no reference is required for the sake of brevity.

6. If the Resolution of the Government dated 27th September, 2002 insists for requirement of transit permit for transportation of Sal leaf, Sal leaf cups and Sal leaf plates, it is to be seen from the provisions in the O.T.T. Rules for which T.T. permit is required under the provisions of the statute.

7. Rule 4 of the O.T.T. Rules provides for transit permit and the Rule reads as follows:-

4. Transit permits - Except as provided in Rule 5, all forest produce in transit by land, rail or water shall be covered by a permit hereinafter called the "Transit Permit" to be issued free of cost by the Divisional Forest or by Assistant Conservator of Forests authorised by him in that behalf:

Provided that the Range Officer or a Forester when duly authorised in that behalf by the Divisional Forest Officer may issue transit permit in cases where no verification at the stump site is necessary:

Provided further that in respect of a minor forest produce collected by the Orissa State Tribal Development Co-operative Corporation Ltd., a Branch Manager or a Divisional Manager and in respect of tassar cocoon collected by the State Tassar Co-operative Society Ltd., Orissa, the Assistant Director of Sericulture can issue transit permits:

[Provided also that for the removal of timber and fire-wood obtained from trees (excluding those species mentioned in Schedule-II) up to two hundred and fifty in number raised in "Farm Forestry" or "Forest Farming for the Rural Poor" plantations under the Orissa Social Forestry Project, the Range Officer may issue the transit permit]:

[Provided also that for removal of bamboos for industrial and commercial purposes from the Sale depots of the Orissa Forest Development Corporation Ltd., the Supervisors of the said Corporation who have passed Matriculation may issue the transit permit].

(emphasis supplied)

A cursory reading of the aforesaid provision makes it clear that all forest produce in transit by land, rail or water are required to be covered by a permit called the "Transit Permit". In other words, there is requirement of transit permit if the consignment in transit is a forest produce within the meaning of its definition in the Orissa Forest Act, 1972. O.T.T. Rules however does not define "forest produce" though minor forest produce has been defined in Rule 2(h). Unless the article in transit is a forest produce, no transit permit is required, as found from a plain reading of the aforesaid provision.

8. In the case of Gangadhar Sahu (supra), this Court was to decide whether plates, trays and cups made of "Siali" leaves come within the definition of "forest produce". This Court, on consideration of the submissions advanced, took the view that plates, trays and cups made out of "Siali" leaves come within the definition of "forest produce", as on removal of the stitches they again turn out to be leaves. It was further held that, if the intrinsic quality is not changed and a new product is not brought into existence, then it is not to be accepted that the initial material has lost its nature and character and has ceased to be a forest produce. Accordingly, in that case, it was held that insistence on transit permit for the purpose of transportation of leaves, plates, trays, cups, etc. made out of "Siali" leaves was not irregular or illegal.

9. In Muralidhar Sahu's case (supra), this Court was to decide validity of Clauses 6 and 7 of the government order by the Forest and Environment Department communicated vide Letter No. 17811/F & E, dated 07.11.2000. The question that was discussed in that case was whether plates and cups made out of Sal leaves change their character and whether it can be said that once Sal leaves are made into cups and plates, they cease to be Sal leaves any more. Considering the submissions advanced in the case, this Court held that even though from Sal leaves, cups and plates are made by stitching Sal leaves with tags, once the tags are removed, they turn out to be leaves again. With the aforesaid reasoning it was further held that such cups and plates made out of Sal leaves are forest produce. Therefore, the Court held that transit permit will be required for regulating transport of Sal leaf cups and plates, etc. and it was further held that Clause 6 of the aforesaid Government Notification does not suffer from any vice

of invalidity.

10. Legality and validity of the Resolution dated 27th September, 2002 was in question in Chittaranjan Sahu's case (supra). In that case it was submitted that complex manual and mechanical processes are involved in converting Sal leaves and Siali leaves into plates, trays and cups, etc., and in the process of such manufacture alien articles like polythene, stitching materials, pasting materials, etc. are used to prepare the same and, therefore, such plates, trays, cups no more remain forest produce. It was further argued that once the end product does not remain a forest produce, transit permit for its transportation is not necessary. This Court, on consideration of the submissions advanced and on analysis of the matter, expressed the view that plates, trays and cups made out of Sal leaves and Siali leaves remain as forest produce and, therefore, demand of transit permit for transportation of such goods is neither illegal nor against the spirit of the Constitution.

11. In all the aforesaid three cases this Court proceeded on the premises that though some manufacturing process is involved, Sal leaves do not change their original character by being stitched or prepared into trays, plates, cups, etc. and they remain forest produce. In view of such conclusion, insistence on requirement of transit permit for transportation of cups, plates, trays, etc. made out of Sal leaves or Siali leaves was stressed.

12. These questions were however not germane for consideration before this Court in the case of Smt. Padamabati Lenka Vs. State of Orissa and Another, . In the case of Smt. Padamabati Lenka (supra) this Court, on consideration of different provisions of the Orissa Forest Act, 1972 and the O.T.T. Rules 1980, held that Sal leaves are forest produce only when they are found in or brought from the forest. In reaching the conclusion, this Court took into consideration the definition of "forest produce" in Sections 2(g)(i) and (ii) of Orissa Forest Act, 1972.

Learned State Counsel had brought to the notice of the Court in Smt. Padamabati Lenka's case, the earlier decision of this Court in Muralidhar Sahu's case. In paragraph-19 of the said judgment, this Court distinguished Muralidhar Sahu's case and in paragraph-20 it was held thus:-

20. It is clear from the facts which have been stated above that the question with which we are concerned in this case, did not arise for consideration in the case of Muralidhar Sahu v. State of Orissa (supra). Therefore, a point on which no decision has taken place cannot be cited as a precedent in the instant case. The difference in the definition of forest produce in Section 2(g)(i) and 2(g)(ii) of the Act was not noticed in that judgment. In paragraph-3 of the judgment the learned Judges have held that Sal leaves comes within the definition of forest produce when they are found in and brought from the forest. In this case nobody is disputing that when Sal leaves are found in and brought from the forest they are forest produce. Apart from that, in Muralidhar's case no question of

prosecution was at all considered. But in the instant case validity of a confiscation proceeding is considered in the peculiar context of Section 2(g)(ii) of the Act. It is, therefore, clear that the issues are different in both the cases. So the decision in Muralidhar (supra) is factually distinguishable.

Same view was expressed in the case of Smt. M. Vijayalaxmi and Sri Ashok Kumar Sahoo (supra). In the case of Smt. M. Vijayalaxmi also this Court took into consideration the earlier decision of this Court in Muralidhar Sahu's case (supra). In all the aforesaid three decisions, i.e. Smt. Padamabati Lenka, Smt. M. Vijayalaxmi and Sri Ashok Kumar Sahoo (supra) this Court proceeded on the premises that Sal leaves are forest produce when they are found in or brought from the forest.

13. Two questions, therefore, were considered in all the aforesaid cases to wriggle out of the question as to whether Sal leaves and Siali leaves are forest produces. They are-

(1) Once the Sal leaves are converted into plates, trays or cups through manufacturing process, they lose the character of being Sal leaves and accordingly the trays, cups or plates made out of Sal leaves cannot be treated as forest produce.

(2) Unless the Sal leaves are found in or brought from the forest, they are not forest produce.

The decision of this Court in the case of Gangadhar Sahu, Muralidhar Sahu and Chittaranjan Sahu (supra) deals with the first question. The decision of this Court however in the case of Smt. Padamabati Lenka, Smt. M. Vijayalaxmi and Sri Ashok Kumar Sahoo (supra) deals with the second question. In taking the views, this Court in the aforesaid cases has proceeded on different premises. In taking a decision in the case of Gangadhar Sahu, Muralidhar Sahu and Chittaranjan Sahu (supra), this Court has proceeded in the premise contained in the first question above and in taking the decision in the case of Smt. Padamabati Lenka, Smt. M. Vijayalaxmi and Ashok Kumar Sahoo (supra) this Court has proceeded in the premise contained in the second question above.

14. The Resolution of the Government of Orissa in Forest and Environment Department dated 27th September, 2002 has already withstood judicial scrutiny in the case of Chittaranjan Sahu (supra). We are not called upon to travel into the question regarding validity of the Resolution. Till it is shown that the Sal leaves are brought from or found in forest, such Sal leaves are not forest produces according to Section 2(g)(ii) of the Orissa Forest Act, 1972. Prima facie, therefore, all Sal leaves are forest produce and transit permit is required for transportation of either Sal leaves or trays, plates, cups etc. made out of Sal leaves. The parties transporting the same are however free to wriggle out of the proceeding by raising the questions, as discussed supra. They are free to raise either the first question or the second question, as formulated above. Non-consideration of the Resolution of the Government of Orissa in Forest and

Environment Department dated 27th September, 2002 in the case of Smt. M. Vijayalaxmi and Sri Ashok Kumar Sahoo (supra), in view of our discussion, does not render the decisions incorrect, in as much as the said Resolution has no bearing on the question whether the Sal leaves or Sal leaf cups, trays and plates, etc. seized by the forest officials for confiscation is a forest produce or not. On proper enquiry, the competent authorities are empowered to decide the aforesaid question, if so raised. We, therefore, hold that this Court in Smt. M. Vijayalaxmi Vs. Divisional Forest Officer-cum-Authorized Officer, Bhadrak (WL) Division and Another, and Ashok Kumar Sahoo Vs. Forest Range Officer, Nayagarh and Another, has expressed the correct view. The consideration would not have been different, had the aforesaid Resolution of the Govt. of Orissa in Forest and Environment Department dated 27th September, 2002 been brought to the notice of the Court.

The Reference is answered accordingly.

A.K. Goel, C.J.

I agree.

A.K. Rath, J.

I agree.