

(1998) 08 OHC CK 0027

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14460 of 1997

Rajkishore Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Orissa Forest Act, 1972 — Section 56, 56(2d)

Citation : AIR 1999 Ori 37

Hon'ble Judges : S.C. Datta, J; R.K. Patra, J

Bench : Division Bench

Advocate : J.R. Dash and K.L. Dash, for the Appellant; K. Patnaik, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this application under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the order dated 22-5-1997 of the Conservator of Forests, Angul Circle, Angul at Annexure-2 and the consequential order of confiscation dated 7-8-1997 passed by the Divisional Forest Officer, Athgarh Division, Atagarh at Annexure-3.

2. The case of the petitioner is that after taking loan from the District Industries Centre, he started a firm in the name and style of M/s. Laxmi Carpentry and carried on business on the strength of a licence granted by the forest authority. On 31-5-1991 at about 5 p.m. a truck bearing registration number OAC 2837 along with door, window frames and choukatha sizes was detained by the Range Officer, Sukinda at Galagaon on Daitary Paradip Express Highway. The petitioner being the owner of the aforesaid forest articles produced challan No. 26 dated 30-5-1991 of M/s. Laxmi Carpentry and challan No. 14 dated 16-4-1991 of M/s. Tariai Carpentry. The Range Officer seized them on the allegation that the forest articles were not backed by valid permit. He accordingly produced them and the vehicle before the Authorised Officer-cum-Assistant Conservator of Forests for initiation of confiscation proceedings u/s 56 of the Orissa Forest Act, 1972

(hereinafter referred to as "the Act"). The confiscation proceeding was initiated against the petitioner and one Birendra Kumar Sahu who was the owner of the truck. The petitioner on being noticed appeared before the Authorised Officer, and produced copy of the round log stock register and sawn size stock register. The Authorised Officer after conclusion of enquiry passed order dated 15-12-1995 (Annexure-1) holding that it would not be appropriate to confiscate the forest articles and the vehicle and directed release of the seized "forest articles" in favour of the petitioner on realisation of fine of Rs. 3,000/- and seized truck in favour of the owner-Birendra Kumar Sahu. It appears that against the aforesaid order dated 15-12-1995 of the Authorised Officer, the Conservator of Forests, Angul Circle, Angul was moved in appeal who by his order dated 22-5-1997 (Annexure-2) set aside the Order of the Authorised Officer and directed to make fresh enquiry and finalise the confiscation proceedings. Pursuant to the said order, the Divisional Forest Officer passed Order dated 7-8-1997 (Annexure-3) directing confiscation of the seized forest articles to the Government.

As already noted, the validity of the order of the Conservator of Forests (Annexure-2) and the consequential order of the Divisional Forest Officer (Annexure-2) are the subject-matter of challenge in this application.

3. Shri Dash contended that no appeal lay to the Conservator of Forests against the Order dated 15-12-1995 of the Authorised Officer and, as such, the order passed by him on 22-5-1997 (Annexure-2) is without jurisdiction and as a necessary corollary the order of the Divisional Forest Officer (Annexure-3) made pursuant to the order of the Conservator of Forests is nonest. The learned Additional Government Advocate, on the other hand, submitted that although the Authorised Officer in his order at Annexure-I directed release of the seized forest articles to the petitioner, it was an "order of confiscation" and:, therefore, the Conservator of Forests rightly entertained the appeal. :

4. Sub-Section (2-a) of Section 56 of the Act provides that where an Authorised Officer seized any forest produce under Sub-Section (1) or where any such forest produce is produced before him under Sub-Section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may Order confiscation of the forest produce so seized or produced together with all tools, ropes, vehicles etc, used in committing such offence

Sub-Section (2-d) and Sub-Section (2-c) of Section 56 of the Act are relevant for our purpose. It is therefore profitable to extract them :

"(2-d) Any forest officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may, within thirty days from the date of the order of confiscation by the authorised officer under Sub-Section (2-a), either suo motu or on application, call for and examine the records of the case and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit:

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-e) Any person aggrieved by an order passed under Sub-Section (2-a) or Sub-Section (2-d) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized, and the District Judge shall after giving an opportunity to the parties to be heard, pass such order as he may think fit and the order of the District Judge so passed shall be final."

Sub-Section (2-d) empowers the Conservator of Forests to call for and examine the records of a case in which an order of confiscation was made by the Authorised Officer within thirty days from the date of such order and may make such enquiry or cause such enquiry and pass appropriate order. On careful perusal of the aforesaid provision, it would appear that Conservator of Forests is not invested with any appellate power as such. It is rather in the nature of supervisory or revisional power in exercise of which the Conservator of Forests may call for and examine the records of a case within thirty days from the date of the order of confiscation made by the Authorised Officer.

He can exercise that power either *sup motu* or on an application. Such power is available to be invoked by the Conservator of Forests only in a case where order of confiscation is made by the Authorised Officer. This order passed by the Conservator of Forests under Sub-Section (2-d) is appealable to the District Judge as provided under Sub-Section (2-e).

Sub-section (2-e) of Section 56 of the Act provides that a person-aggrieved by an order passed under Sub-Section (2-a) or Sub-Section (2-d) may file an appeal to the District Judge within the prescribed period. The expression by an order passed under Sub-Section (2a) is significant. As already indicated, under Sub-Section (2-a), if the Authorised Officer is satisfied that a forest offence has been committed in respect of the forest produce seized by him or produced before him, he may order confiscation of the said forest produce together with tools, vehicles etc. used in committing such offence. While dealing with the matter under Sub-Section (2-a). the Authorised Officer may pass order of confiscation or may not pass order of confiscation. in the latter case, if the department feels aggrieved it can file an appeal before the District Judge as provided under Sub-Section (2-a). Similarly, in a contra case where an order of confiscation is made by the Authorised Officer, the aggrieved party may file appeal before the District Judge as envisaged under Sub-Section (2-e). It. therefore, follows that either of the orders, be it an order of "non-confiscation" or order of "confiscation", it is appealable to the District Judge under Sub-Section (2-e), From the aforesaid analysis we are inclined to hold that no appeal under Sub-Section (2-d) can be filed against an order of "non-confiscation" to the Conservator of Forests. It is for two reasons :

(1) Sub-Section (2-d) as such does not invest the Conservator of Forests with

any appellate power. It is in the nature of supervisory power and (2) even if it is loosely called as appellate power, the Conservator of Forests can be moved under Sub-Section (2-d) only in a case where a positive order of confiscation is passed by the Authorised Officer.

5. Now coming to the facts of the case, it has to be examined whether the order passed by the Authorised Officer dated 15-12-1995 (Annexure-1) is available to be examined by the Conservator of Forests under Sub-Section (2-d). We have carefully gone through the said order and are satisfied that it is not an order of confiscation. On the contrary, the Authorised Officer directed release of the seized forest articles to the petitioner and the seized truck to the owner. We do not find any merit in the contention of the learned Additional Government Advocate that the said order of the Authorised Officer is an order of confiscation inasmuch as there is no finding recorded by the Authorised Officer that he was satisfied that a forest offence had been committed in respect of the forest produce produced before him. An order of confiscation can be made by the Authorised Officer under Sub-Section (2-a) if he comes to hold that he was satisfied that a forest offence has been committed in respect of the forest produce seized or produced before him.

6. For the reasons aforesaid, we have no hesitation to hold that the Order dated 15-12-1995 (Annexure-1) is not available to be examined by the Conservator of Forests in exercise of powers under Sub-Section (2-d). Consequently, his order at Annexure-2 is without jurisdiction. The Divisional Forest Officer passed order of confiscation at Annexure-3 in obedience to the order of the Conservator of Forests. Once it is held that the order of Conservator of Forests at Annexure-2 is without jurisdiction, the order at Annexure-3 made by the Divisional Forest Officer pursuant to the order of the Conservator of Forests is non est in the eye of law.

7. In the result, the impugned orders dated 22-5-1997 and 7-8-1997 at Annexures-2 and 3 respectively are hereby quashed and the order of the Authorised Officer dated 15-12-1995 at Annexure-I so far as it relates to the petitioner is restored.

8. The writ application is accordingly allowed. There would be no order as to costs.

S.C. Datta, J.

9. I agree.