

(2015) 03 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 9211 of 2001

Shiba Prasad Sahu

APPELLANT

Vs

Authorised Officer-Cum-A.C.F.

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

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

Citation : AIR 2015 Ori 69 : (2015) 119 CLT 834 : (2015) 5 FLT 518 : (2015) 1 OLR 1045

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : P.K. Patnaik and B. Sahoo, for the Appellant; P.K. Biswal, Learned Additional Government Advocate, Advocates for the Respondent

Judgement

Biswanath Rath, J.

1. This is a writ petition filed by the petitioner calling upon the opposite party to show cause as to why the proceeding vide O.R. Case No. 125-B of 2001-2002 instituted against the petitioner for confiscation of his vehicle bearing No. OR 03-5100 shall not be quashed. The case of the petitioner is that the petitioner is the owner of the truck bearing registration No. OR 03-5100 and the said truck is being plied by the petitioner to transport his agricultural produces, fertilizers and cement particularly the materials with which the petitioner deals. Petitioner claims that this is the source of earning for his livelihood. On 18.05.2001, the truck of the petitioner was sent to Tikabali for delivery of cement from Sonapur and at this point of time the petitioner received a call from his driver that his truck has been seized by the Forest official in Boudh on the allegation of transportation of Sal Leaves plates as a finished product numbering about 2400, which was being allegedly transported by the driver. Consequent upon which, the Forest officials initiated a confiscation proceeding against the petitioner involving the particular Truck bearing No. 125-B of 2001-2002 U/s. 56 of the Orissa Forest Act.

2. Petitioner being noticed made his appearance in the said proceeding. Pending consideration of the proceeding, there is an interim release of the vehicle in favour of the petitioner pursuant to an order dtd. 6.07.2001 passed in O.J.C. No. 8374 of 2001.

3. It is next contended by the petitioner that the statement of the driver and owner of the Sal leaves plates was recorded by the Forest officials at the time of seizure of the vehicle but behind back of the petitioner. Petitioner is contesting the proceeding on the premises that the vehicle is not involved in any forest offences and submitted that though not admitting the offence but accepting for sake of argument that the vehicle got involved in a forest offence since the petitioner is not a party to the forest offence, initiation of a proceeding involving the vehicle of the petitioner is illegal, arbitrary and without any basis.

In the alternate, the petitioner contended that since the Sal Leaves Plates is available in the open market and for selling the same no permit is necessary, transportation of the Sal Leaves Plates cannot be construed as forest offence and further the produces seized are finished products. Hence, initiation of a proceeding U/s. 56 of the Orissa Forest Act is otherwise also bad in law.

4. It is on these premises, the petitioner assailed the initiation of the proceeding itself and claimed for declaring the confiscation proceeding indicated hereinabove as bad in law.

5. Per contra upon service of notice, the sole opposite party on his appearance filed a counter affidavit inter alia contending therein that the writ petition is not maintainable as the petitioner has not exhausted his remedy before the concerned Authorized Officer, who is in session of the matter. It is next contended by the opposite party that following the provision as contained in Section 2(g)(ii)(a) of Orissa Forest Act, 1972 the Sal Leaves is a forest produce. Further basing on a Minor Forest Produce Policy Resolution of the Government of Orissa Forest and Environment Department dtd. 31.03.2000, the Sal Leaves have been defined as a forest produce being covered under paragraph-4 (b) of the aforesaid Resolution. Further the petitioner having not been in possession of any license or transit permit for transportation of Sal Leaves and the Sal Leaves being prohibited for commercial collection particularly in Boudh and Kandhamal Districts, the transportation made by the petitioner is unauthorized and therefore there is no illegality in initiation of a proceeding by the Forest Department.

6. Before proceeding to decide the matter, it is necessary here to take note of relevant legal provisions as required for just determination of the case which are as follows:

"Section 2(g) of the Orissa Forest Act:-

(i) the following whether found in, or brought from a forest or not, that is to say -

(a) timber, charcoal, caoutchouc catechu, wood-oil, resign, natural varnish, bark, Tussary Cocoon, lac, gums, roots of Patal Garuda, mohua flowers, mohua seeds,

myrabolans, Kendu leaves, Sandalwood, tamarind, hill-broom, Siali leaves, Siali fibres, Sal seeds;

(b) wild animals and wild birds, skins, tusks, horns, bones and all other parts or produce of wild life; and

(c) such other produce as may be notified by the State Government; and

(ii) the following when found in or brought from a forest that is to say -

(a) trees and leaves, flowers and fruits and all other parts or produce of trees not hereinbefore mentioned;

(b) plants not being trees (including grass, creepers, reeds, and moss) and all parts or produce of such plants;

(c) honey, wax and arrowroot;

(d) peat, surface oil, rock, sand and minerals (including limestone, laterite, mineral oils and all products of mines or quarries):"

"The Orissa Timber and Other Forest Produce Transit Rules, 1980:-

Rule 2(i) "Schedule" means the schedule appended to these rules.

Rule 4 of the Orissa Timber and Other Forest Produce Transit Rules, 1980

4. Transit permit - 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 Officer or by the Assistant Conservator of Forests, authorized by him in that behalf: Provided that the Range Officer or a Forester when duly authorized 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 Cooperative Society Ltd., Orissa, the Assistant Director of Sericulture can issue transit permits:

1[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]:

2[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].

Rule 5 (i) "for transport of minor forest produce within the district except lac,

tassar, myrabolans, gums and resin, root of patala garuda, sal seed, tamarind and hill brooms, subject to such limit of transport and storage without transit permit as may be notified by State Government in Official Gazette for different items;

Clause 4 (b) of the Resolution dtd. 31.03.2000

Certain items, namely sal leaves, gums and resins of different trees, khaira and catechu, the barks of different trees and climbers and roots of various species which have medicinal or other uses will not be leased out, as the collection of these items on commercial scale has adverse impact on the sustainability of the particular species and the forest. In particular localities, however,, based on sound assessment of silvicultural availability and enforcement of appropriate collection procedure any of these lease-barred items may be allowed to be collected either directly by field organization of Forest Department or a Government undertaking." 7. The main question to be determined herein is whether the Sal Leaves are the forest produces or not and as a consequence upon which whether the proceeding initiated against him is valid or not. Section-2(g) of the Act deals with forest produce. Section-2(g) is divided into two Parts. Part-(i) and Part (ii). Part-(i), i.e. Section 2(g)(i) lists certain items as forest produce "whether they are found in, or brought from a forest or not." But so far as Part-(ii) is concerned, i.e., Section 2(g)(ii), certain items have been listed as forest produce but "they are forest produce only when they are found in or brought from a forest." Under this category i.e. in 2(g)(ii)(a) falls leaves.

It is a common ground that Sal leaves fall under Section 2(g)(ii)(a) of the said Act.

Therefore, Sal leaves "per se" are not forest produce. They are forest produce only when they are found in or brought from a forest."

8. The main thrust of the argument of the petitioner is that from the bare reading of the seizure list as available under Annexure-2 it clearly indicates that the place of seizure is Rajbati of Boudh in front of P.H.D. Office. Therefore the petitioner contended that the Sal Leaves being not seized along with vehicle found in or were brought from a forest, no offence under the Forest Act is committed. On reading of Section 2(g) of the said act it is made clear that the framers of the Statute have made a clear distinction between the Class of items listed in Section 2(g)(i) and the items listed in Section 2(g)(ii). So far as the items in 2(g)(i) are concerned, it is clear that these items are forest produces wherever they are found in or brought from a forest or not. But the items which are listed under section 2(g)(ii) can only become forest produces when they are found in or brought from a forest but not otherwise.

9. There is a great deal of logic behind the differentiation of the items into two categories. If the nature of the items which are categorized in two clauses of Section 2(g) of the said Act are properly analysed, it will be clear that items which are categorized in 2(g)(i) are generically different from items which are

categorized in 2(g)(ii). Sal leaves are found outside the forest in great abundance in the State of Orissa. The Sal leaves which are found outside the forest are collected by poor people and they are sold by them for their livelihood. By doing so they do not commit any forest offence inasmuch as such leaves are not collected in or brought from the forest. So any person who collects Sal leaves which are found outside the forest and does not bring leaves from the forest does not commit any offence.

The obvious intention of the definition clause under 2(g)(ii) is that leaves which falls inside the forest cannot be taken out of the forest, as that would deplete the forest. But from the very nature of things dry leaves are found outside the forest and such leaves do not come within the sweep of Section 2(g)(ii).

Admittedly the vehicle was intercepted on the main road and there is no allegation by the prosecution that the vehicle was carrying leaves which were collected from the forest."

10. Under the aforesaid discussions and the definitions as quoted hereinabove, this Court is of the opinion that having regard to the statutory distinction made in the definition of the Forest produces U/s. 2(g)(ii) of the said Act, the Sal leaves seized from the petitioner's vehicle particularly in view of no allegation by the Forest authority, the Sal leaves sized or intercepted in absence of any material to establish of its being brought from the Forest cannot be treated as a forest produces and therefore any prosecution based on such premises also does not hold good.

11. From another point of view also the Sal Leaves, if collected outside, the forest officials cannot attract commission of offence under the Forest Act. A confiscation proceeding having a criminal implication, confiscation is a penalty for an offence. A person loses his title of the property pertaining to the confiscated goods in a confiscation proceeding. So in the context of such penalty provision, the definition of Sal Leave calls for strict interpretation. Consequently, I hold the confiscation proceeding as bad in law and thus liable to be declared as illegal.

12. This particular issue has got the test of this Court and in a catena of decisions I find my above view gets the support of all such decisions as reflected herein below:

"(1) 2006 (II) OLR 109 the case in between Smt. Padamabati Lenka v. State of Orissa and Anr.

(2) 2010 (Vol. II) OLR 911 the case in between Smt. M. Vijayalaxmi v. Divisional Forest Officer-cum-Authorised officer, Bhadrak (WL) Division, Bhadrak and Anr.

(3) And in an unreported decision rendered by a Single Bench of this Court in W.P. (C) No. 12286 of 2004 in the case in between Ashok Kumar Sahoo v. Forest Range Officer, Nayagarh and Anr. disposed of on 24.06.2011."

13. In view of my above findings and the legal position as of now, I do not find

the continuance of the confiscation proceeding No. 125-B of 2001-2002 will serve any lawful purpose, thus cannot be permitted to continue.

14. The writ petition succeeds. However, there shall be no order as to cost.