
(2019) 04 OHC CK 0010
In the Orissa High Court
Case No : OJC No.6582 Of 1995

Sk. Ayub

APPELLANT

Vs

Authorized Officer-Cumasst. Conservator Of Forest & Others

RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Orissa Forest Act, 1972 — Section 52(3), 56(2a)

Citation : (2019) 04 OHC CK 0010

Hon'ble Judges : K. S. Jhaveri, CJ; Dr. A. K. Rath, J; Biswajit Mohanty, J

Bench : Full Bench

Advocate : Gautam Mishra, B.P. Pradhan

Judgement

Dr. A.K.Rath, J

The following question of law has been referred to the Full Bench:

Whether a provision for imposition of fine in lieu of confiscation can be added into Sec.56(2-a) of the Act, though the only punishment provided is confiscation.

2. Section 56(2-a) of the Orissa Forest Act, 1972, which is hub of the issue, is quoted hereunder;

56. Seizure of property liable to confiscation

Â (1) & (2) xxx xxx xxx

(2-a) Where an authorised officer seizes 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, chains, boats, vehicles or cattle used in committing such offence.â? (as it stood on 24.01.1994 when the vehicle was seized and on the date of reference

dtd.16.10.1995)

3. The aforesaid section was the subject-matter of interpretation before a Division Bench of this Court in the case of Gurudev Singh Rai v. Authorised

Officer-cum-Asst. Conservator of Forests, Rairakhol Division and another, 76 (1993) CLT 671. The Division Bench held:

â??Having deeply reflected over the question at hand, we are of the firm view that if the deficiency in section 56(2-a), of which reference has been made above, would

have come to the knowledge of the legislature, it would have definitely provided for imposition of fine as an alternative punishment in those cases where the

authorities may not be satisfied about the desirability of confiscation and may not also feel happy in allowing the owner of the vehicle to go scot-free. We, therefore,

read in the aforesaid section a power to impose fine in lieu of confiscation in appropriate cases. What could be the appropriate cases cannot be laid down with

rigidity the same has to be left to the satisfaction of the appropriate authority.â??

4. In the instant writ application, another Division Bench of this Court held that the Court while construing the provision should not easily read

something which has not been expressly enacted. While exercising jurisdiction under Articles 226 ad 227 of the Constitution of India, the Court cannot

go on expanding the scope of dispute by adding words to the statutory provisions which do not exist. With this factual scenario, the matter has been

referred to the Larger Bench.

5. We have heard Mr. Gautam Mishra, learned amicus curiae and Mr. B.P. Pradhan, learned Addl. Government Advocate for the State.

6. Mr. Mishra, learned amicus curiae submitted that an identical provision was the subject-matter of interpretation before the apex Court in the case of

State of Jharkhand and another v. Govind Singh, AIR 2005 SC 294. The apex Court held that the High Court was not justified in releasing the vehicle

by imposing fine in lieu of confiscation. The matter has been set at rest by the apex Court.

7. Sub-sec. (3) of Section 52 of the Indian Forest Act, 1927, which has been inserted to the Bihar Act 9 of 1990 is pari materia to Section 56(2-a) of

the Orissa Forest Act, 1972. In *Govind Singh*, a truck was found loaded with coal. Confiscation proceeding was instituted against the respondent under the provisions of the Indian Forest Act, 1927. The Divisional Forest Officer, Hazaribagh directed confiscation of the truck. Appeal filed by the respondent before the Deputy Commissioner, Hazaribagh met with the same fate. Then the matter was carried in revision before the Revisional Authority-cum-Secretary, Department of Forest and Environment, which was eventually dismissed. Assailing the orders, he filed writ petition before the High Court. The High Court held that value of the coal was not established and considering the value of coal which was being transported it would be inequitable to direct confiscation. It was held that to meet the ends of justice the power to impose fine in lieu of confiscation can be read into Section 52(3) of the Act. Accordingly, a fine of Rs.50,000/- was imposed. The matter travelled to the apex Court.

7.1. The apex Court held when the words of a statute are clear, plain or unambiguous, the Courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used. A statute is an edict of the Legislature. The elementary principle of interpreting or construing a statute is to gather the *mens* or *sententia legis* of the Legislature. The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them".

7.2. The apex Court further held that High Court was not justified in reading into Section 52(3) of the Indian Forest Act, 1927 the power to direct release by imposing fine in lieu of confiscation. It was further held that it is not the value of the forest produce which is relevant, but the value of the article liable for confiscation.

8. In *State of Karnataka v. K. Krishnan*, AIR 2000 SC 2729, the apex Court held that the provisions of the Karnataka Forest Act, 1963 are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act.

9. Further, the law has undergone a sea change after Gurudev Singh Rai. The amendment to Orissa Forest Act, 1972 was made by Orissa Act 12 of

2003. The word "may" appearing in Sec.56(2-a) has been substituted by "shall".

10. In view of the authoritative pronouncement of the apex Court in the case of Govind Singh and amendment to Orissa Forest Act, 1972, the

inescapable conclusion is that the Court has no power to impose fine in lieu of confiscation. The view taken in Gurudev Singh Rai is not correct

enunciation of law, which is accordingly overruled.

11. Before parting with the case, we record our deep appreciation to the sincere efforts made by Mr. Gautam Mishra, Advocate. He has rendered his

valuable assistance to the Court. Registry is directed to place the matter before the assigned Bench.

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