

(2019) 03 OHC CK 0009

In the Orissa High Court

Case No : Writ Petition (Civil) No.13148 Of 2016

Smt. Sukanti Malik

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Orissa Forest Act, 1972 — Section 56

Odisha Timber & Other Forest Produce transit Rules 1980 — Rule 4, 21

Citation : (2019) 03 OHC CK 0009

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : U.C. Mishra, A. Mishra, A. Bal, J.K. Mohapatra, B.P. Sasmal, S.N. Mishra

Final Decision : Allowed

Judgement

Biswanath Rath, J

1. This writ petition has been filed challenging the order passed by the learned District Judge, Balasore in FAO No.74/2015 and further seeking a

direction to the opposite parties more particularly the opposite party no.4 to release the seized Ashok Leyland Pickup Van bearing registration No.OD-

01-D-2137.

2. Short background and the undisputed fact involving the case is that the petitioner is the owner of the Ashok Leyland Pickup Van bearing

registration No.OD-01-D-2137. The vehicle of the petitioner was seized for carrying timber alleged to be illegally transported with the knowledge and

connivance of driver without having a Timber Transit Permit. The pickup van appears to have been firstly detected by the Nilagiri Police and on

information the Forest officials seized the vehicle alongwith forest produces. On seizure and upon entering into enquiry an Offence case vide No.13K

dated 7.10.2014 was initiated for confiscation of the vehicle as well as the forest produces appearing to be a proceeding U/s.56 of the Forest Act.

Defending the case, the opposite party herein examined seven witnesses and the petitioner herein examined two witnesses. The competent authority

rejected the claim of the petitioner and directed for confiscation of both the vehicle involved as well as goods involved. On filing of an appeal, the

District Judge also rejected the appeal. Record further reveals, in the meantime, a proceeding U/s.21 of the Orissa Timber and other Forest Produce

Transit Rules, 1980 has also been initiated.

3. Shri Mishra, learned counsel for the petitioner challenging the orders of the original authority as well as the appellate authority submitted that the

transportation of the goods was made from Nimain Nagar in the State of West Bengal to Chintamanipur, Nilagiri in the State of Odisha and

admittedly, the transportation of the materials involved was made after obtaining Timber Transit Permit from the competent authority at the West

Bengal end but however, for transportation inside the State of Odisha there was no Timber Transit permit obtained. Shri Mishra, learned counsel

contended that for bona fide transportation of Timber under the cover of T.T. Permit granted by the authority in West Bengal, the Forest authority

instead of initiating the case U/s.56 of the Forest Act should have asked the driver involved for obtaining a Timber Transit permit for further

transportation of the materials inside Odisha. Shri Mishra, thus contended that it is, for the above background of the case and particularly keeping in

view that the goods transported did possess a Timber Transit permit from the West Bengal end for the initial phase of journey, obtaining a Timber

Transit Permit inside the State of Odisha was a mere formality. Learned counsel for the petitioner, therefore, taking this Court to the provision at

Section 56 of the Act, 1972 and Rule 4 of the Rules, 1980 contended that there is no question of attracting the provision of Section 56 of the Orissa

Forest Act and it is, on the other hand, taking this Court to the criminal proceeding already initiated involving the petitioner U/s.21 of the Rules, 1980,

Shri Mishra, learned counsel for the petitioner contended that the Forest authority took right step in proceeding against the Driver in initiating a

proceeding under Rule 21 of the Rules, 1980 but however failed to appreciate the non-involvement of the proceeding U/s.56 of the Act. It is, in the

above premises, learned counsel for the petitioner contended that the Section 56 proceeding becomes illegal and therefore, this Court interfering in

both the orders of the original authority as well as the appellate authority involving the Section 56 of the Act, 1972 proceeding should set aside the same.

4. Shri S.N. Mishra, learned Additional Government Advocate for the State opposite parties, while not disputing that the first phase of the

Transportation of the goods under confiscation did possess a valid Timber Transit Permit issued by the competent authority, on the other hand, taking

this Court to the provision at Section 56 of the Act submitted that once the transportation of the wood is found to be without having any Timber Transit

permission, the provision at Section 56 of the Act is automatically attracted. In the circumstance, Shri S.N. Mishra, learned Additional Government

Advocate contended that there being no Timber Transit permit for transportation of the materials inside the State of Odisha, there is no illegality in

initiating a proceeding U/s.56 of the Act. Shri S.N. Mishra, learned Additional Government Advocate thus contended that there is no illegality in either

of the impugned orders requiring interference in the same.

5. Considering the rival contentions of the parties, this Court finds, there is no denial that the seized goods being transported in the vehicle belonging to

the petitioner from the West Bengal end but however, with a Timber Transit permits up to the border of the State of Odisha. It is only the vehicle

reaching the border of the Odisha, it was ascertained that the vehicle involved was not having the Timber Transit permit to transport the goods inside

the state of Odisha. This Court here taking into account the provision at Section 56 of the Orissa Forest Act, 1972 and the Rules 4 & 21 of the Orissa

Timber & OFP Transit Rules, 1980, finds both the provisions reads as follows:

56. Seizure of property liable to confiscation. (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, ropes, chains, boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place, on such

property a mark indicating that the same has been so seized and shall as soon as may be,

except where the offender agrees in writing to get the offence compounded, 16[either produce the property seized before an officer not below the rank of an Assistant

Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or] make a report of such

seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is

unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior and the Divisional Forest Officer.

Â [(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.

(2-b)No order confiscating any property shall be made under sub-section (2-a) unless the person from whom the property is seized is given â?

(a) a notice in writing informing him of the grounds, on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the manner.

(2-c) Without prejudice to the provisions of sub-section (2-b), no order of 14 Ins. by Orissa Act 9 of 1983. 15 Re-numbered by Orissa Art 2 of 1991. 16 Ins. by Orissa

Act 9 of 1983. 17 Ins. by idid. 20 confiscation under sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the

satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in-

charge of the tool, rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against

such use.

(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 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-d) or subsection (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.]

(3) The property seized under this section shall be kept in the custody of a Forest Officer or with any third party, until the compensation for compounding the offence

is paid or until an order of the Magistrate directing its disposal is received.â??

[Provided that the seized property shall not be released during pendency of the confiscation proceeding or trial even on the application of the owner of the property

for such release.]

Rule 4 and 21 of the Orissa Timber & OFP Transit Rules, 1980 reads as follows:

â??4. Transit permits â?" 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

â??Transit Permitâ?? to be issued free of cost by the Divisional Forest officer or by 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 Tribunal Development Co-operative Corporation Ltd., a Branch Manager or a Divisional Manager and in respect of tassar cocoom 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.]

21. Penalties "Whoever contravenes any of the provisions of these rules shall be punished with imprisonment for a term which may extend to five years and with

fine which may extend to five thousand rupees:

Provided that where offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority or where the offender has been previously convicted for a like offence, the offender shall be inflicted punishment with imprisonment for a term which shall not be less than three years but which may

extend to seven years and with fine which may extend to ten thousand rupees.

Taking into account the facts involving the seizure of goods with vehicle on the premises of not having the T.T. permit for further part of its journey

inside the State of Odisha and for the vehicle had the T.T. permit for transportation of goods therein uptill the border of Odisha being granted by the competent authority and going through the provision at Section 56 of the Act, 1972, this Court finds, there did not involve any offence U/s.56 of the Act, 1972.

It is, at this stage of the matter, considering that the petitioner was already

granted with a Timber Transit permit by the West Bengal authorities, this Court finds, there involved no offence U/s.56 of the Act, 1972. Thus, this Court observes, there was no question of initiating any proceeding U/s.56 of the Act, 1972. This Court, accordingly, interfering in the initiation of the proceeding as well as the order passed by the competent authority involving the OR case No.13K dated 7.10.2014 and the consequential order passed by the appellate authority, sets aside the both.

This Court, however, observes, for the petitioner having no the further Timber Transit permit to transport the goods so seized within the territory of Odisha, the proceeding initiated under Rule 21 of the Rules, 1980 will continue and will be decided in accordance with law and providing opportunity of contest and hearing to the petitioner.

6. The writ petition succeeds. No cost.