

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 2430 of 2005**

Shiv Shankar Kesharwani, S/o late Shri Sita Ram, aged 50 years, R/o Khodri, Tehsil Pendra Road, Distt. Bilaspur (Chhattisgarh).

---- **Petitioner**

Versus

1. State of Chhattisgarh Through- the Secretary, Department of Forest, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (CG).
2. Conservator of Forest-cum-Appellate authority under Indian Forest Act, 1927, Forest Circle, Bilaspur (Chhattisgarh).
3. Divisional Forest Officer-cum-Authorized Officer, Pendra Van Mandal, Pendra, Distt. Bilaspur (CG).

---- **Respondents**

For petitioner	:	Shri Sourabh Sharma, Advocate.
For Respondent/State	:	Shri OP Sahu, Govt. Advocate.

Hon'ble Shri Justice P.Sam Koshy

Order on Board

03.11.2016

1. Instant petition under Article 226/227 of the Constitution of India has been filed assailing the order firstly passed by the Divisional Forest Officer (In short, DFO) on 06.08.2004 in Case No.74/11 ordering for confiscation of the Truck bearing registration number CG-12-ZC-1119 belonging to the petitioner which was seized being involved in the forest offence. Secondly, the petitioner has also challenged the order dated 10.11.2004 passed by the appellate authority i.e. Conservator of Forest (in short CF) who has also affirmed the order passed by the DFO rejecting the appeal of the petitioner.

2. Lastly, the petitioner has also challenged the judgment dated 10.03.2005 passed by the Sessions Judge, Bilaspur, in Criminal Revision No.451 of 2004 whereby the revision petition preferred against the orders of DFO as well as Conservator of Forest has also been rejected.
3. The facts in nutshell is that, one Rajendra Kumar Kesharwani is said to have hired the said Truck for some mining activities. However, the forest officials registered a Forest Offence No.76/2011 on 06.06.2004 alleging that the said Truck belonging to the petitioner was found to be illegally loading boulders/stones in the said Truck from the forest area. A show cause notice (Ex.P/2) dated 30.06.2004 was issued in this regard, to which Rajendra Kumar Kesharwani, who had taken the vehicle from the present petitioner had submitted his reply on 01.07.2004 contesting the case on merits.
4. After considering the reply and upon hearing said Rajendra Kumar Kesharwani, the DFO-cum-authorized officer, Pendra Forest Division, Pendra, Distt. Bilaspur passed an order dated 06.08.2004 ordering for confiscation of the said Truck involved in the offence. It was the finding of the authorized officer that the said Rajendra Kumar Kesharwani was not able to provide satisfactory explanation in respect of loading of boulders/stones on the Truck leading to order of confiscation being passed.
5. The order dated 06.08.2004 was subjected to challenge before the appellate authority i.e. Conservator of Forest in Appeal case No.58/Revenue and the appellate authority vide order dated 10.11.2004

affirmed the order of DFO and rejected the Appeal justifying the confiscation order passed by the authorized officer.

6. The said order of the Conservator of Forest as well as DFO was put to challenge in a Revision petition which was registered as Criminal Revision Petition No.451 of 2004 before the Sessions Judge, Bilaspur. The revisional court i.e. Sessions Judge, Bilaspur also vide impugned order dated 10.03.2005 rejected the revision petition thereby upholding and confirming the order of the DFO as well as Conservator of Forst. It is these three orders which is under challenge in this petition.
7. The sole contention which the petitioner has put forth in the present petition is the fact that the Truck of which the order of confiscation has been passed infact belongs to present petitioner and that the present petitioner has been denied an opportunity of hearing by the concerned authorities and therefore, the entire confiscation proceedings initiated from the stage of issuance of notice is per se illegal and bad in law and deserves to be set aside.
8. State counsel opposing the petition, however, submits that the contention and submissions made by the counsel for the petitioner is totally misconceived and is not sustainable for the reason that the order passed by the Conservator of Forest as well as the revisional court are cases which have been prosecuted by the petitioner himself, and therefore, it cannot be said that he has not been afforded an opportunity of hearing before the courts/authorities below. The petitioner has failed to submit before the authorities/court as to what prejudice has been caused in the

instant case on the basis of the allegations and contentions that he has raised.

9. It is secondly contended by the State counsel that Rajendra Kumar Kesharwani and the present petitioner are infact the real brothers, and therefore, it is hard to believe that the petitioner was not aware of confiscation proceedings that have been drawn in respect of the petitioner's vehicle. Moreover, it is also contended by the State counsel that a perusal of reply submitted to the show cause notice issued by the authorized officer also would reflect that Rajendra Kumar Kesharwani had infact not raised such objection of his not being the registered owner of the Truck, and therefore, he would not be in a position to contest the case. Rather it is a case where Rajendra Kumar Kesharwani has contested the case on its merit itself. Thus, for the aforesaid reasons, the State counsel submitted that the petition deserves to be dismissed.
10. Having considered the entire facts and circumstances of the case and also on perusal of the record what clearly reflects from the orders and the records which have been filed along with the petition is the admitted fact of the petitioner being the real brother of Rajendra Kumar Kesharwani who has participated in the confiscation proceedings at the stage of issuance of notice and also before the authorized officer. It is also not in dispute that in spite of fact of the petitioner knowing about the proceedings of confiscation being drawn by the DFO and it was being contested by his own brother, the petitioner never intervened in the said proceedings and sought for being impleaded as party or have sought permission to contest the case.

Further even at the appeal stage as well as in the revision stage, the petitioner has not been able to provide cogent satisfactory and plausible explanation in respect of loading of stones/boulders in the Truck.

11. Another aspect which cannot be lost sight of is the fact that the appellate authority i.e. conservator of Forest as well as the Revision Petition before the Revisional Court was being fought by the petitioner himself which itself is an indication that even if the notice was issued in the name of Rajendra Kumar Kesharwani and it was the Rajendra Kumar Kesharwani who was contesting the case, the petitioner was also monitoring the same. The said fact is evident from the fact that immediately after the order was passed by the authorized officer, it was the petitioner who had preferred the appeal and the revision which was contested on its merit.
12. Thus, for the foregoing reasons, the contentions being raised by the petitioner that no opportunity of hearing was afforded to him is not tenable or sustainable and this court does not find any extraordinary strong grounds raised by the petitioner calling for an interference in the orders passed by the Revisional Court as well by the Conservator of Forest and the DFO in the proceedings of confiscation.
13. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
Judge