

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10107 of 2022

Krishna Joshi and others

..... Petitioners

Mr. S. K. Dwibedi, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.08.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Order dated 11th March, 2022 passed by learned District Judge, Keonjhar in FAO No.3 of 2021 filed under Section 56 (2-e) of the Odisha Forest Act, 1972 (for short, 'the Act') is under challenge in this writ petition.
3. Mr. Dwibedi, learned counsel for the Petitioner submits that the Petitioner was transporting iron ore in his vehicles (Tippers), which were seized by the forest officials on the allegation of commission of forest offence for transporting forest produce without any authority of law. Accordingly, OR Case No.15^{BL} of 2020-21 was initiated on the file of Authorized Officer-cum-Assistant Conservator of Forest, Keonjhar Forest Division-Opposite Party No.2 and the vehicles of the Petitioner were directed to be confiscated. Assailing the same, Petitioner filed FAO No.3 of 2021. Learned District Judge, though referred to the statements made by two independent witnesses, namely, PW-4 and PW-5, who stated

that the vehicles were found parked on the road side, but disbelieving the same learned District Judge held that the said witnesses being rustic villagers were not expected to say objectively as to the boundary and area of Anseikala Khesara forest. Accordingly, he confirmed the order of confiscation passed by the Authorized Officer.

4. Mr. Dwibedi, learned counsel for the Petitioner further submits that the vehicles of the Petitioner had never entered into the forest area. There is absolutely no iota of evidence that either the vehicles were seized in the forest area or the forest produce were being transported from the forest area. Thus, the forest officials did not have any jurisdiction either to seize or to initiate proceeding for confiscation of his vehicles.

5. As the matter centers round consideration of statements made by two independent witnesses, namely PW-4 and PW-5, this Court has directed learned State Counsel to verify the same and make submission.

6. On verification of record, Mr. Dash, learned AGA referred to the following discussions made by learned District Judge while adjudicating the appeal.

“....PW-4, the independent witness, has deposed that five numbers of iron ore loaded vehicles were standing near the jungle. But, in his cross-examination, he deposes that the vehicles were standing on the road side. PW 5 also deposes that the tippers were standing on the road side near the jungle. PW-6 has also deposed that on 19.02.2021, at about 12.15 AM, he saw five numbers of dumpers entered into the jungle. The drivers and others fled away. On checking the vehicle, they found that each vehicle was being loaded with approximately 6.0 MT iron ores. No documents relating to the loaded iron ores were found from the vehicle. From the above evidences of the forest officials, it is quite manifest that forest produce namely iron ore weighing 6.0 MT were being loaded in each five numbers of seized tippers. The drivers and occupants fled away. So, the Forester (PW1),

seized the trucks and iron ores as no documents relating to the iron ores was found after checking the vehicles. So far as the evidences of the independent witness are concerned, they are rustic villagers. They are not expected to say objectively as to the boundary and area of the Khesara Forest. Merely because they are deposing that the vehicles had been parked on the road side of the forest, it cannot be inferred conclusively that the seized vehicles were outside the forest area. Further, this Court does not find any reasonable ground to disbelieve the evidences of the official witnesses as to the seizure of iron ores from the five numbers of tippers entering into the forest in the relevant night.”

7. On perusal of the aforesaid discussion made by learned District Judge, Keonjhar, it is clear that PW-4 and PW-5, who are the independent witnesses, clearly stated that the vehicles were seized when parked on the road side. There is no material on record to show that the place from where the vehicles were seized is within the boundary and area of Khesara forest.

8. Mr. Dash, learned AGA made an endeavour to persuade this Court submitting that the vehicles were in the forest area and when the forest officials chased, drivers of those vehicles fled away parking the vehicles on the road side. No material to that effect is forthcoming from record including the impugned order itself. On the other hand, it is clear from the statement of the official witnesses, namely, PW-6 that on 19th February, 2021, at about 12.15 AM, he saw five numbers of dumpers entered into the jungle. The drivers and others fled away. On checking the vehicle, they found that each vehicle was being loaded with approximately 6.0 MT iron ores. No documents relating to the loaded iron ores was found from the said vehicles.

9. Thus, it clearly shows that although PW-6 deposed that the vehicles entered into the forest area and seeing the forest

officials, drivers of the vehicles fled away, the independent witnesses deposed that the vehicles were seized from the road side. There is no material on record to show that the vehicles were chased by the forest officials, as submitted by learned AGA, or the vehicles had entered into the forest area. If at all, it is the statement of PW-6 is assumed to be correct that by seeing the forest officials, drivers of the vehicles fled away, the vehicles would have been seized from the forest area itself. On the contrary, it is not disputed that the vehicles were seized, when those were found parked on the road side near the forest. In view of the discussions made above, this Court is of the considered opinion that the vehicles were seized from the road side, which does not come under the forest area or boundary.

10. Section 2 (g) (ii) of the Act defines '*forest produce*', which reads as follows:-

2. **Definition**
- (g) '**forest**' produce includes –
- (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 herein before 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 above provision makes it amply clear that when the aforesaid products brought from a forest, it would constitute a forest produce. And if it is transported without a valid permit under law the same would be a forest offence. In the instant

case, no material is produced by the prosecution to the effect that the vehicles loaded with iron ores, were brought from the forest. Moreover, the vehicles were seized when those were parked on the road side. These material aspects were lost sight of by both the Authorized Officer as well as by learned Appellate Court while considering the matter. Thus, the order confiscating the vehicles of the Petitioner is not sustainable.

11. Accordingly, this Court has no hesitation to set aside the order dated 16th July, 2021 (Annexuer-2) passed by the Authorized Officer- cum- Assistant Conservator of Forests, Keonjhar Forest Division- Opposite Party No.2 in confiscation proceeding, i.e., OR Case No. 15^{BL} of 2020-21 as well as order dated 11th March, 2022 (Annexure-1) passed by learned District Judge, Keonjhar in FAO No.3 of 2021. Consequentially, the writ petition is allowed with a direction to Opposite Party No.2 to release the vehicles of the Petitioner forthwith.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge