

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.3753 of 2010

Gokul Chandra Mishra

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

25.7.2022

Order No

5. 1. This matter is taken up through Hybrid Mode.

2. Heard Mr. S. Behera, learned counsel for the petitioner and Mr. A.K. Mishra, learned Additional Government Advocate.

3. The present writ petition has been filed with the following prayer:-

“Under the circumstances it is humbly prayed that this Hon’ble Tribunal may be graciously pleased to quash the order of recovery as has been passed in Cols.4-7 of the LPC under Annexure-6 and Annexure-5.

And further be pleased not to take any coercive action against the applicant

And/or pass any other order/orders as this Hon’ble Tribunal deems fit and proper in this case.”

4. Mr. Behera, learned counsel for the petitioner submitted that vide letter dated 16.10.2003 issued by the Divisional Forest Officer, Jharsuguda K.L.Divsion, Jharsuguda under Annexure-1, the petitioner was directed to comply the objections found in his P.L.

cash account within a period of three days from the date of receipt of the said memo. As reflected in Annexure-1, the said letter dated 16.10.2003 was communicated to the petitioner on 05.12.2003. Mr. Behera, learned counsel for the petitioner submitted that on receipt of the said communication on 05.12.2003, the petitioner filed his objection on the very same day before the Divisional Forest Officer, Jharsuguda K.L.Division, Jharsuguda through the Range Officer. It is submitted that prior to filing of such objection and consideration of the same, the self same authority i.e. DFO, K.L.Division, Jharsuguda vide letter dated 29.11.2003 hold the petitioner liable to pay to the extent of Rs.48,553.30 paisa and the said amount was also reflected as recoverable in the LPC issued in the favour of the petitioner vide Annexure-6. Mr. Behera, learned counsel for the petitioner submitted that since the letter under Annexure-1 was only served on 05.12.2003 and the petitioner filed his objection on the very same date, the action of Opposite Party No.3 in holding the petitioner liable to pay Rs.48,553.30 paisa is illegal. Mr. Behera further submitted that against the said order of recovery though the petitioner preferred an appeal by raising various points, but the appellate authority also refused to entertain the matter and rejected the same vide order under Annexure-5. Accordingly, Mr. Behera submitted that since the order passed by original authority is not legal and

justified, the order passed by the appellate authority under Annexure-5 is liable to be set aside.

5. Mr. Mishra, learned Addl. Government Advocate on the other hand made his submission relying on the counter filed by Opposite Party Nos.2 & 3 as well as Opposite Party No.4. MR. Mishra, learned AGA submitted that since the petitioner prior to issuance of Annexure-1 on 16.10.2003 was already asked to file his objection vide letter dated 05.09.2003 and no objection was made, Opposite Party No.3 has rightly hold the petitioner to pay the amount as indicated in Annexure-3.

6. This Court after going through Annexure-1 found that since the petitioner did not file his objection pursuant to letter dated 05.09.2003, he was allowed further time of three days to file his objection vide letter dated 16.10.2003 which was admittedly received by the petitioner on 05.12.2003. Therefore, the stand taken by Mr. Mishra, learned AGA cannot be accepted by this Court.

7. Be that as it may, this Court finds that prior to service of the letter under Annexure-1 and the receipt of the objection, the original authority i.e. Opposite Party No.3 had already held the petitioner liable to pay Rs.48,553.30 paisa. This Court accordingly while quashing the said liability as fixed against the petitioner, remits the matter to Opposite Party No.3 to take a fresh decision in the matter. The said authority shall consider the objection stated to have been filed

by the petitioner through the Range Officer, Pallahada Range on 05.12.2003 and the provision contained under Rule 346 of the Orissa Forest Code, 1979. It is also submitted that the issue involved in the present case is also covered by some of the decision of this Court. It is open for the petitioner to raise all those points before the said Opposite Party and the said Opp. Party is also directed to give a personal hearing to the petitioner while deciding the matter afresh. The entire exercise be completed within a period of four months from the date of receipt of this order.

8. With the aforesaid observation and direction, the writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

sangita