

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.32175 of 2021

Satyapriya Sahoo

....

Petitioner

Mr. R.N Nayak, Advocate

-versus-

State of Odisha

....

Opposite Party

*Mr.S. S. Mohapatra,
AGA.*

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
30.08.2022**

**Order
No.**

05. 1. This writ of certiorari under Article 227 of the Constitution of India has been filed by the Petitioner challenging the order dated 30.07.2021 passed by the learned District Judge, Cuttack in FAO No.08 of 2021 wherein the learned District Judge has confirmed the order dated 18.12.2020 passed by the Authorized Officer-cum-Divisional Forest Officer, Athagarh Division in O.R. Case No.22-A of 2019-20 confiscating the truck bearing registration number OR-02-F-7086 for its being allegedly engaged in removal of Eucalyptus trees from the Reserved forest.

2. Heard the learned counsel for the parties.

3. It appears that as the vehicle was used for commission of a forest offence under Section 27(3)(b) of the Orissa Forest Act, 1972, the said confiscation was made after due notice to the Petitioner, who is the owner of the vehicle. Since the owner of the vehicle is said to have failed to discharge his burden as contemplated under Section 56(2-c) of the Orissa Forest Act, 1972 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, the Authorized Officer passed the said order. The appeal being carried against the said order, the learned District Judge, Cuttack has confirmed the same vide order dated 30.07.2021 passed in FAO No.08 of 2021.

4. Learned counsel for the Petitioner submitted that the Eucalyptus trees being exempted species, for transportation of the same, no T.T. permit is required for removal of the same from the Reserved forest, as such he could not have been proceeded with. Hence, the finding of the Authorized Officer which is confirmed by the learned District Judge is without any substance and hence the same is liable to be quashed.

5. However, the learned counsel appearing for the State submits that though Eucalyptus trees is coming under the category of exempted species, one cannot remove the same from a Reserved forest. The aforesaid is a forest produce is not in dispute. When the aforesaid is a forest produce, removal of the same from the Reserved forest is impermissible under Section 27(2)(b) of the Orissa Forest Act, 1972 without any authority. Therefore, the offence may be said to have been committed by the driver of the truck for removal of the aforesaid forest produce from the Reserved Forest. Since the driver has committed the offence

using the truck of the Petitioner for commission of the forest offence, the Petitioner could not discharge the burden as contemplated under Section 56(2)(c) of the Orissa Forest Act, 1972 in the confiscation proceeding to wriggle out the confiscation under Section 56(2-a) of the Orissa Forest Act, and as such, no fault can be found with him vide the impugned order.

6. The materials on record would go to show that on 26.06.2019 the Forest Guard, Kandarpur Beat, on getting information that Eucalyptus trees which got felled during last cyclone Fani were being loaded in the offending truck unauthorizedly. He rushed to the spot. On seeing the Forest Guard the persons engaged in loading the vehicle with the felled trees fled from the spot. He seized the Eucalyptus trees loaded with the said truck and registered U.D. Case No.4A of 2019-20 for commission of the forest offence. During the course of enquiry, it came to the knowledge that the truck belonging to the Petitioner was used for commission of the forest offence, for which a proceeding under

Section 56 of the Orissa Forest Act was initiated. From the evidence it appears that Eucalyptus trees which got uprooted during last cyclone Fani were loaded in the truck for transportation without any authority. No doubt, for transportation of Eucalyptus trees, no T.T. permit is required, but that does not authorize a person to remove Eucalyptus trees from a Reserved forest or any other forest which does not belong to him. The same therefore, clearly attracts Section 27(2)(b) of the Orissa Forest Act, 1972 i.e. removal of forest produce from the Reserved forest using the truck in question. Therefore, forest offence having been committed using the truck, the order of confiscation was made in respect of the forest produce and the truck as seized. The Petitioner's only defence is that the same being an exempted species, no T.T permit is required. Such a plea is without substance in view of the statutory provisions stated above. Hence, this Court is of the view that the impugned orders suffer from no infirmity or illegality inasmuch as the Petitioner failed to discharge the burden as

contemplated under Section 56(2-c) of the Orissa Forest Act, 1972 to wriggle out the same nor he has taken such a stand in this case.

7. Hence, the writ petition filed by the Petitioner for quashment of the impugned orders being devoid of merit stands dismissed.

PKS/MRS

