

Case No. 83

Orissa High Court

AIR 2002 ORISSA 130
B.PANGRAHI AND M. PAPANNA, JJ

Orissa State Financial Corporation Petitioner v. Range Officer,
Sukinda and others, Respondents.
Original Journ. Case NO. 16087 of 2001, D/-6-2-2006.

Orissa Forest Act - vehicle confiscated - loan advanced by State financial corporation - Act silent if confiscation is free from encumbrances - hence corporation as charge over the confiscated vehicle.

PANIGRAHI J : This writ petition assails the order of confiscation passed by the Authorised Officer Kenjhar in a proceeding under S. 56 (2a) of the Orissa Forest Act. 1972 in O.R. Case No. 5.SK/ 90-91 which has been confirmed in appeal No 77. Of 1999 dated 10th August, 2001

2. The case married in the writ petition has suffered a chequered history. One Ranjan Kumar Jena had availed a loan of purchase of a truck bearing No. OSU 4661 some time the year 1987. The lance Ranjan Kumar jena had, however, paid some instalments. But committed defaults thereafter. The truck was allegedly employed for the purpose of transporting illegal forest produce as a reason whereof it was seized under S.56 of the Orissa Forest Act. (Hereinafter referred to as the Act"). The original lance filed an application before the Authorized Officer cum- A.C.F.Keonjhar for release of the truck, but the Author iced officer did not direct release of the same. Therefore, the proceeding continued and final order was, however, recorded against the owner Ranjan Kumar Jena by confiscating the above trucks. Since the owner had purchased the truck by availing loan from the writ petitioner. Orissa State Financial Corporation. On hypothecation and there were defaults committed, therefore, the writ petitioner filed an appeal before the learned District judge, Cuttac seeking a direction for release of the truck. Since the appeal was dismissed, the writ pedometer had silted this petition challenging the legality or otherwise of the aforesaid order of confiscation.

3. Mr. Routray, learned Advocate appearing for the writ petitioner has, at the outset, invited our attention that the Orissa State Financial Corporation is a creature of the state under a Statute, therefore, the order of confiscation, if any, passed by the Authorised Officer should be subject to payment of the dues of the Orissa State Financial Corporation. It has been further submitted that the Orissa State Financial Corporation, s long as its loan is not discharged, is deemed to be the owner and since there was no proceeding against the petitioner- O.S.F.C., the vehicle in question should not have been directed to be confiscated. In case the petitioner -O.S.F.C. is not given liberty to realize its dues from the sale proceeds of the truck, it would sustain heavy financial loss since it cannot recover either from the loanee or from the guarantor.

4. Mr. Mohanty, learned Addl. Govt. Advocate while repelling the aforesaid submissions has raised the following contentions:

(i) the proceeding initiated under S. 56 of the Act is an independent proceeding and it was enacted with a view to punish the person who commits forest offence, in case it is found that the vehicle, machinery, tool or cattle are used for the purpose of illegal transportation of forest produce, the Authorised Officer empowered under the Statute is entitled to pass orders of confiscation of those machineries, tools, vehicles or cattle, if any:

ii) In this case both the forums have held that the truck in question was liable for confiscation and in that event, if any remedy is available to writ petitioner, it is under common law that they can file a suit for recovery of the loan amount or can fall back upon any other property offered as co- lateral security or against the guarantor surety, but cannot claim release of the truck.

5. After hearing the rival contentions raised at the Bar. We find that the sole question to be decided in this case is whether the truck in question which was directed to be confiscated could be released in favour of the petitioner. There is no dispute that the vehicle was purchased after availing loan from the petitioner -O.S.F.C. By Rajan Kumar Jena. It is also proved that the said truck was employed for the purpose of illegally transporting forest produce. In this background let us examine the ambit and scope of S.56(2-A) of the Act. While appreciating the said contention we feel it relevant to quote S. 56(2-a) of the Act which reads as follows.

" Where an authorised officer seizes any forest produce under Sub- Sec. (1) if were bat such forest produce is produced before him under Sub- sec. (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, baits, vehicles or cattle used in committing such offence."

The interpretation of S. 56(2a) had appeared for consideration before a Division Bench of this court reported in 1993 76 Cut L.T. 671: (AIR 1992 Orissa 287) (Gurudev singh Rai v. Authorised Officer cum Asst. Conservator of Forests. Rairakhol Division) in the aforesaid judgment the Division Bench held in the following manner

" We shall now examine the all important question posed at the threshold. Now there is no dispute that S. 56(2-A) of the forests Act permits confiscation alone, on the Authorised Officer being satisfied that a forest offence has been committed: it does not speak of imposition of fine as a substitute for confiscation. Of course, that section has conferred discretion in the matter. Which would appear from the use of the word 'may' in this connection. It is because of the use of this word that it was held State of Orissa v. Santosh Kumar, (1983) 56 Cut. L.T. 469 that before ordering confiscation, all the circumstances of the case have to be borne in mind. It is by referring to this decision that in the aforesaid . O.J.Cs. Fine was imposed in lieu of confiscation as it was felt that the facts of the case did not call for confiscation of the vehicle."

On a plain reading of the provisions as well as the judgments cited supra a trite position has emerged that there has been no third option left to an Authorised Officer but to confiscate or not to confiscate the vehicle tools, machineries etc. in a proceeding under S. 56(2-A) of the Act. Since the word 'may' has been used in the Section previously, there were some doubts with regard to the aforesaid import of the word 'may' which was clarified in the aforesaid decision and the Division Bench held that the word 'may' used in the Section shall read as 'shall' therefore, in that view of the matter, the Authorised Officer had correctly passed an order of confiscation of the truck after he being satisfied that it was utilized after he being satisfied that it was utilized for illegal transportation of the forest produce without any permit.

6. We find, in another division Bench case reported in (1990) 70 Cut L.T. 613 (Jogender Singh v. State of Orissa) a question has been raised as to whether the order of

confiscation passed under S. 56(2-A) OF THE Act can be subject to discharge of loan advanced by a financing bank. But since the financing bank was not the writ petitioner in that case, therefore, that question was left open and remained undecided.

7. Mr. Routray, learned advocate appearing for the writ petitioner, has relied upon a decision of Madras High Court reported in AIR 1996 Madras High Court reported in Air 1996 Madras 334 (S.Dhanasekaran v. Tamil Nadu industrial Investment Corporation Ltd., The facts of that case are some what different from the present case. In the above decision after the confiscation an auction purchaser purchased the vehicle and thereafter the Tamil Nadu Industrial Investment Corporation in exercise of its power under S. 29 of the State Financial Corporation Act 1951 seized the vehicle. Therefore the auction purchaser had approached the Court for appropriate direction. The learned Judge in the above case has held that the State Financial Corporation does not have an over-riding effect over the provisions of S. 49.F of the Tamil Nadu Forest Act 1882. But, however, it had permitted the Corporation which is an instrumentality of the state to approach the State Government to consider the Corporation's prayer for return of the sale proceeds after deducting the cost incurred for bringing the vehicle for sale in public auction.

8.in this case a quandary situation has emerged as to whether the State Financial Corporation which is an instrumentality of the State Would be deprived of getting their money, which was advanced to the principal loanee for the purpose of purchasing the vehicle. The writ petitioner has not produced any document before us to show whether at the time of advancing the loan any property was either offered by the loanee or by the guarantor/ surety as co-lateral security. In case such co-lateral securities were offered, it is open to the petitioner O.S.F.C. to proceed for realisation of the outstanding dues against those co-lateral securities. It is further to be considered whether the amount advanced to the loanee should be treated as a charge over the property against which the loan was sanctioned. In the event the petitioner O.S.F.C. satisfied that the vehicle in question was kept as a charge for the loan then. It is open to them to approach the Authorised Officer claiming the loan amount from the consideration obtained after the vehicle put to auction. Since all such money advanced by the petitioner O.S.F.C. can be treated as a public Demand Recovery Act and is being Public Demand Recovery Act and is being treated as a charge, in that event any confiscation of the vehicle shall be subject to the charge of the O.S.F.C. The language employed in S. 52 (2-A) OF THE Act is lucidly clear that the order of confiscation is not free from encumbrance and to that extent it is silent. Therefore,

it is understood that since the loan was advanced by the O.S.F.C. petitioner by keeping the vehicle as a charge, they have a right to recover the same treating it as public demand.

9. with the above observation/ modification of the order of the learned District Judge, the writ application is disposed of.

M. PAPANNA J. - 10. I agree

Order accordingly