
(2023) 09 OHC CK 0019

Orissa High Court

Case No: Writ Petition (C) No. 26842 Of 2017

Conservator of Forests,
Cuttack Kendu Leaves
Circle, Badambadi,
Cuttack & Ors

APPELLANT

Vs

Surendra Kumar
Routray & Anr

RESPONDENT

Date of Decision: Sept. 5, 2023

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Odisha Forest Departmental Code, 1979 - Rule 346, 348

Citation: (2023) 09 OHC CK 0019

Hon'ble Judges: Dr. B.R. Sarangi, J; Murahari Sri Raman, J

Bench: Division Bench

Advocate: R.N. Nayak, N.K. Sen, S. Sahani

Final Decision: Allowed

Judgement

Dr. B.R. Sarangi, J

1. The petitioners, who are functionaries of the State, by means of this writ petition, seek to quash the order dated 27.01.2017 passed in O.A.

No.1001(C) of 2000 under Annexure-3, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, has held that the action of petitioner

no.2 in disallowing the vouchers and rejection of the appeal by petitioner no.1 is contrary to the provisions contained in Rule 346 of the Odisha Forest

Departmental Code, 1979.

2. The factual matrix of the case, in brief, is that opposite party no.1, while working as Forest Range Officer, Kantamal (KL) Range under the

administrative control of the D.F.O., Boudh (KL) Division, took some advances during the kendu leaf crop year 1987 and 1988 to incur expenditure

for procuring kendu leaves to reach the prescribed target and submitted relevant vouchers to cover up such forest advances through the Sub-

Divisional Forest Officer, Manamunda (KL) Sub-Division under whose direct supervision the work was being carried out. In the first part of 1989,

opposite party no.1 was transferred to Madhapur Kendu Leaf Range under Athamallik (KL) Division. While he was continuing at Madhapur (KL)

Range, the DFO, Athamallik (KL) Division intimated him that the DFO, Boudh (KL) Division had mentioned in the LPC for recovery of Rs.236.24

towards management account and Rs.87,236.15 towards PL account of Kantamal (KL) Range up to February, 1988 of him. Against such intimation

of recovery, opposite party no.1 preferred appeal under Rule 348 of the Odisha Forest Departmental Code, 1979 before petitioner no.1 on 6.10.1990.

He also approached the Odisha Administrative Tribunal by filing O.A. No.1640 of 1990 challenging the order for recovery of Rs.87,472.39 paise and

the Tribunal, vide order dated 05.03.1991, disposed of the said O.A. directing petitioner no.1 to dispose of the appeal within a period of three months,

pending which there would be no recovery as per the disallowed vouchers from opposite party no.1. Pending consideration of the appeal, petitioner

no.2, vide memos dated 28.03.1997 and 11.08.1998, which were filed as Annexure-1 and Annexure-7 respectively to the O.A., directed opposite party

no.1 to deposit Rs.1,04,533.75 in shape of bank draft.

2.1 Aggrieved by such memos at Annexures-1 and 7 to the O.A., opposite party no.1 filed O.A. No.2314(C) of 1998 and the Tribunal, vide order

dated 29.10.1998, directed petitioner no.1 to dispose of the appeal preferred by opposite party no.1 within a period of three months. In compliance of

the same, petitioner no.1, vide office order no.80 dated 30.04.1999 at Annexure-13 to the said O.A., disposed of the appeal with a direction to opposite

party no.1 to deposit hard cash of Rs.40.50 and also the disallowed vouchers of amount of Rs.71,375/-, which was communicated to opposite party

no.1 by petitioner no.2, vide letter dated 22.05.1999 at Annexure-14 to the O.A.

2.2 Alleging the office order dated 30.04.1999 and the letter dated 22.05.1999 at Annexure-13 & Annexure-14 respectively to the O.A. as illegal and

violative of codal provision contained in Rule 346 of Odisha Forest Departmental Code, 1979, opposite party no.1 again approached the Tribunal by

filing O.A. No.1001(C) of 2000 and the Tribunal, vide order dated 27.01.2017, disposed of the said O.A., which is the subject matter of challenge in

this writ petition.

3. Mr. A.K. Mishra, learned Counsel appearing for the petitioners contended that opposite party no.1 was in-charge of Kantamal (KL) Range of

Boudh (KL) Division from 30.08.1985 to 21.09.1988 and on his transfer to Athamallik (KL) Division, he was relieved from Boudh (KL) Division on

21.9.1988. His LPC was sent to DFO, Athamallik (KL) Division, vide memo no.521 dated 10.02.1999 of DFO, Boudh (KL) Division, mentioning

Rs.236.24 as outstanding under management account and Rs.87,236.15 as outstanding under P.L. account up to February,1988 for recovery from

opposite party no.1. Therefore, opposite party no.1 filed representation on 31.05.1997 requesting the DFO, Boudh (KL) Division to supply the detailed

list of disallowed vouchers. But prior to receipt of his request, the concerned records were sent to the Conservator of Forest, KL Circle, Cuttack for

finalization of appeal preferred by him. It is further contended that opposite party no.1 of his own, by letter dated 20.07.1997, stated that due to

unavoidable circumstances he could not attend the hearing on 17.06.1999 without mentioning that the letter no.1976 dated 05.06.1997 of the

Conservator of Forests, Cuttack Kendu Leaves Circle was received late. Therefore, opposite party no.1 deliberately and willfully avoided to appear

before the Conservator of Forests, Cuttack Kendu Leaves Circle to defend his case. The Divisional Forest Officer, Boudh (KL) Division has decided

the vouchers diligently by following the legal provisions. Thereby, there is no question of violation of any of the provisions of the Odisha Forest

Departmental Code, 1979. As a consequence thereof, the order of the Conservator of Forests, Cuttack Kendu Leaves Circle is not illegal and violative

of executive instructions, rather opposite party no.1 has avoided willfully to put forth his grievance before the appellate authority, though he was given

sufficient opportunity to defend his case. Therefore, he contended that the relief sought by opposite party no.1 before the Tribunal should not have

been allowed.

4. Mr. R.N. Nayak, learned counsel appearing for opposite party no.1 vehemently contended that opposite party no.1 is not liable to pay the demand

so raised by the authority. Therefore, justifying the order dated 27.01.2000 passed in O.A. No.1001(C) of 2000 by the Tribunal quashing the office

order dated 30.04.1991 and the memo dated 22.05.1999 at Annexures-13 & 14 to the O.A., he contended that as per the provisions contained in Rule

346 of the Odisha Forest Departmental Code, 1979, if no decision is taken on withheld vouchers within a period of three months, the withheld

vouchers should be incorporated in the Divisional Accounts. Since no decision on withheld vouchers was taken within three months, opposite party

no.1 is not liable to pay the amount, as indicated in Annexures-13 & 14 to the O.A. Thereby, it is contended that the Tribunal has not committed any

illegality or irregularity in passing the order dated 27.01.2000 in O.A. No.1001(C) of 2000 so as to warrant interference of this Court at this stage.

5. This Court heard Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the petitioners and Mr. R.N. Nayak, learned counsel

appearing for opposite party no.1 in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the

parties, the writ petition is being disposed of finally at the stage of admission.

6. The factual matrix, as narrated above, reveals that opposite party no.1, while continuing in service at Kantamal (KL) Range of Boudh (KL)

Division under the administrative control of DFO, Boudh, on being transferred to Madhapur Kenduleaf Range under Athamallik (KL) Division, was

issued with LPC vide memo dated 10.02.1999 mentioning recovery of Rs.236.24 as outstanding under management account and Rs.87,236.15 as

outstanding under P.L. account up to February, 1988. Against such order of recovery, opposite party no.1 preferred appeal under Rule 348 of the

Odisha Forest Developmental Code, 1979, before petitioner no.1 on 06.10.1990. Due to inaction, he filed O.A. No.1640 of 1990, which was disposed

of vide order dated 05.03.1991 with a direction to petitioner no.1 to dispose of the said appeal within a period of three months, pending which there

would be no recovery as per the disallowed vouchers from opposite party no.1. Pending consideration of the appeal, petitioner no.2, vide memos dated

28.03.1997 and 11.08.1998, at Annexure-1 & Annexure-7 respectively to the said O.A., directed opposite party no.1 to deposit Rs.1,04,533.75 in

shape of bank draft. Against the said orders, opposite party no.1 filed O.A. No.2314(C)/1998 and the Tribunal, vide order dated 29.10.1998, directed

petitioner no.1 to dispose of the appeal preferred by opposite party no.1 within a period of three months. In compliance of the same, petitioner no.1,

vide office order no.80 dated 30.04.1999 at Annexure-13 to the said O.A., disposed of the appeal with a direction to opposite party no.1 to deposit

hard cash of Rs.40.50 as well as the amount of disallowed vouchers, i.e., Rs.71,375/-, which was communicated to opposite party no.1 by petitioner

no.2, vide letter dated 22.05.1999 at Annexure-14 to the O.A. The same was challenged by opposite party no.1 in O.A. No.1001(C) of 2000 alleging

violation of the codal provisions contained in Rule 346 of Odisha Forest Departmental Code, 1979.

7. For better appreciation, Rule 346 of Odisha Forest Departmental Code, 1979 is quoted below:-

Withholding and disallowing of vouchers-

“346(1): If a voucher is withheld for incorporation in the Divisional Accounts on account of inaccuracies or owing to suspicion of fraud, the explanation of

the Range Officer and the Officer who had disbursed the amount in the voucher should be obtained. The Divisional Forest Officer after due consideration of the

explanation shall order about its incorporation in part or in full or he may order disallowing the vouchers. The disallowed amount shall then be recovered from

the person disbursing the voucher. An appeal against the decision of the Divisional Forest Officer shall however be with the Conservator if this is preferred within

thirty days. The decision of the Conservator shall be final. In the event of a fraudulent voucher been disallowed in part or in full, further disciplinary action may

also be taken.

(2) Decision on withheld vouchers should be taken within 3 months, failing which all withheld vouchers shall be incorporated in the Accounts.

On perusal of the aforesaid provision, it is made clear that if a voucher is withheld for incorporation in the Divisional Accounts, on account of

inaccuracies or owing to suspicion of fraud, the explanation of the Range Officer and the Officer, who had disbursed the amount in the voucher,

should be obtained. The Divisional Forest Officer, after due consideration of the explanation, shall order about its incorporation in part or in full or he

may order disallowing the voucher. That means, if the voucher is disallowed on account of inaccuracies or owing to suspicion of fraud, then

explanation of the Range Officer and the Officer, who has disbursed the amount in the voucher, shall be obtained. As such, the requirements of Rule

346 of the Odisha Forest Departmental Code, 1979 have not been followed in the present case. It is for the first time, when the LPC was sent, it was

indicated that opposite party no.1 is liable to pay the demand raised due to disallowed vouchers. There is nothing on record to show that an explanation

was called for from opposite party no.1 and on consideration of the same the Divisional Forest Officer had passed order disallowing the vouchers. In

absence of the same, direction issued to recover the amount from opposite party no.1 is not in consonance with the provisions of Rule 346 of the

Odisha Forest Departmental Code, 1979. Furthermore, the order of the Divisional Forest Officer is appealable before the Conservator of Forests, if it

is preferred within a period of 30 days, and the decision of the Conservator of Forests shall be final. Though opposite party no.1 preferred appeal, the

appellate authority, without considering the same in proper perspective, directed to deposit hard cash of Rs.40.50 and disallowed amount of

Rs.71,375/- vide Annexure-13 to the O.A. and communication thereof was made vide letter dated 22.05.1999 at Annexure-14 to the O.A. It is further

provided under Rule 346 that decision on withheld vouchers should be taken within three months, failing which all withheld vouchers shall be

incorporated in the Accounts.

8. The Tribunal, while passing the order impugned dated 27.01.2017, came to a finding that the provisions of Rule 346 of the Odisha Forest

Developmental Code, 1979 have not been followed and the appeal preferred by opposite party no.1 has been disposed of mechanically without

application of mind and direction to opposite party no.1 to deposit Rs.40.50 and also disallowed amount of Rs.71,375/- vide Annexure-13 to the O.A.

and communication made thereof vide letter dated 22.05.1999 at Annexure-14 to the O.A. is contrary to the provisions of Rule 346 of the Odisha

Forest Developmental Code, 1979. The Tribunal, as it seems, has committed gross error apparent on the face of the record, having come to such a

conclusion without applying its mind to the provisions contained in Rule 346 of Odisha Forest Developmental Code, 1979, because if the vouchers

were withheld for incorporation in the Divisional Accounts on account of inaccuracies or owing to suspicion of fraud, the explanation of the Range

Officer and the Officer, who had disbursed the amount in the vouchers, should have been obtained. But, as a matter of fact, no such explanation from

opposite party no.1 was obtained, rather, when opposite party no.1 was transferred and his LPC was sent, for the first time it was indicated that

opposite party no.1 is liable to pay Rs.236.24 towards management account and Rs.87,236.15 towards PL account of Kantamal (KL) Range up to

February, 1998. Such determination of liability and communication thereof has been made without adhering to the provisions of Rule 346 of the Odisha

Forest Developmental Code, 1979. If that be so, the appellate authority could not have passed the order impugned. Even if the appellate authority

passed such order, the Tribunal should have applied its mind and remitted the matter to the Divisional Forest Officer to act in consonance with the

provisions of Rule 346(1) of the Odisha Forest Developmental Code, 1979 to determine the liability, which is appealable before the Conservator of

Forests within thirty days. Therefore, the very initiation of demand raised by the Divisional Forest Officer, without calling for explanation from

opposite party no.1, is not in consonance with the provisions of Rule 346(1) of the Odisha Forest Developmental Code, 1979. As such, without calling

for such explanation, the demand raised by the Divisional Forest Officer against opposite party no.1 cannot be sustained in the eye of law and

consequently the appeal preferred by opposite party no.1 and final order passed by the Conservator of Forest cannot be sustained in the eye of law.

The Tribunal, having failed to understand the provisions contained in Rule 346 in proper perspective, passed the order impugned, which cannot be

sustained in the eye of law.

9. When the basic rudiment of the orders passed by the Divisional Forest Officer, as well as the Conservator of Forests in appeal under Annexures-13

and 14 to the O.A. was under challenge, the Tribunal ought to have set aside those orders and remitted the matter to the Divisional Forest Officer for

fresh adjudication in terms of Rule 346(1) of the Odisha Forest Developmental Code, 1979. But, instead of doing so, the Tribunal quashed the orders

challenged before it as Annexures-13 and 14 and directed that the withheld vouchers shall be incorporated in the Divisional Account and opposite

party no.1 shall not be liable to pay the amount as indicated in Annexures-13 and 14. Thereby, this Court is of the view that the Tribunal has

committed gross error apparent on the face of the record and without applying its mind in proper perspective has passed the impugned order dated

27.01.2017, which cannot be sustained in the eye of law.

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