

(2011) 02 CAL CK 0002

Calcutta High Court

Case No: Writ Petition No. 931 (W) of 2011

Badal Chandra Pal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Feb. 7, 2011

Acts Referred:

- Forest Act, 1927 - Section 59
- Limitation Act, 1963 - Section 5

Citation: (2012) 2 CHN 538

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Bhaskar Prasad Banerjee, for the Appellant; P.K. Dutta for the State, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this art. 226 dated January 13, 2011 is questioning an undated order of the Authorized Officer, District of Jalpaiguri & Siliguri Sub-division of district of Darjeeling under s. 59A(3) of the Indian Forest Act, 1927. Sections 59A-59G were inserted after section 59 of the Indian Forest Act, 1927 by the West Bengal Act 22 of 1988.

2. Sub-section(3) of section 59A provides that where any timber or other forest produce which is the property of the State Government is produced before an authorised officer under sub- section(1) of section 59A and the authorised officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.

3. A vehicle of the petitioner was seized by a Range Officer on April 8, 2007 on the grounds that it was used in committing forest-offence. A large quantity of timber that the vehicle was carrying was seized. The petitioner, who was served with notice, accepted the charges taking the plea that due to ignorance he violated the provisions of the Indian Forest Act, 1927 and the West Bengal Forest Produce Transit Rules, 1959. After giving opportunity of hearing, the authorized officer concluded that the vehicle was liable to be confiscated, and accordingly he passed the impugned order confiscating the vehicle and the forest produce.

4. The petitioner was entitled to appeal against the order u/s 59D that provides that any person aggrieved by an order u/s 59A or section 59C may, within thirty days from the date of communication to him of such order, prefer an appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats, vehicles or cattle have been seized; and that the District Judge shall, after giving the appellant and the officer who passed the order an opportunity of being heard, pass an order confirming, modifying or annulling the order appealed against.

5. There is no provision for condonation of delay in lodging an appeal u/s 59D. In para. 20 the petitioner has stated that the order was communicated to him in February or March 2010. It is to be noted that the authorized officer sent the copy of the order to the petitioner by a memo dated January 7, 2010. The petitioner has also stated that for the reasons stated in para. 20 he could not lodge an appeal against the order of the authorized officer. All the reasons are in the nature of explanations ordinarily given in an application u/s 5 of the Limitation Act, 1963.

6. From the above-noted facts, it is evident that the time to lodge an appeal against the order expired as back as April 2010. In the absence of any provision for condonation of delay in lodging an appeal, the petitioner would not have been entitled to lodge any appeal against the order after expiration of the statutory period mentioned in section 59D. Long before the date at which this petition was brought the period had expired. Hence at the date this petition was brought the petitioner could not lodge an appeal u/s 59D. Having already lost his right to appeal against the order, he could not approach the High Court under art. 226 questioning the validity thereof.

7. Counsel has invited me to permit the petitioner to lodge an appeal after considering the explanations given in para. 20.

8. Had there been any provision for condonation of delay in lodging an appeal, perhaps I could consider the question of permitting the petitioner to lodge an appeal with an application for condonation of delay stating the reasons stated in para. 20 of this petition and asking the District Judge concerned to examine the question of condonation of delay. In the absence of any provision for condonation of delay, I cannot direct the District Judge concerned to entertain an appeal against

the order of the authorized officer.

9. Counsel has then submitted that the authority u/s 59C may be directed to exercise the power of revision.

10. Section 59C provides that any Forest Officer of a rank not inferior to that of the Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette may suo motu, or on application by the aggrieved person call for and examine any record of any order u/s 59A and may make such inquiry or cause such inquiry to be made and may pass such order as he deems fit and proper; but that no such record shall be called for after the expiry of thirty days from the date of the order u/s 59A.

11. It is evident from the provisions of section 59C that the power of revision conferred thereby can be exercised or invoked only within thirty days from the date of the order of the Forest Officer u/s 59A. Here the order was passed on or before January 7, 2010 and hence the section 59C power could be exercised or invoked, if at all, within the first week of February 2010. Hence today there is no scope for making an order directing the section 59C authority to exercise the power of revision. It is also to be noted that an order u/s 59C would have been appealable u/s 59D.

12. Counsel has lastly submitted that the impugned order of confiscation was made in contravention of the provisions of section 59B.

13. Section 59B provides that no order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made u/s 59A except after giving a notice in writing to the owner of or the person from whom, such property or tools, ropes, chains, boats, vehicles or cattle have been seized for showing cause why the same should not be confiscated and considering his objection, if any; and that no order confiscating any motor vehicle shall be made except after giving a notice to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections, if any.

14. It is evident from the impugned order confiscating the vehicle u/s 59A that it was made after giving notice to the petitioner, the registered owner of the vehicle and considering his case. Hence I do not find any reason to say that the order was passed in violation of the provisions of section 59B. For these reasons, the petition is dismissed. No costs. Certified xerox.