

GAHC010221292021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7296/2021

SAFIQUL SK
S/O- EBRAHIM SK, R/O- HATICHAPA PALGACHI, KALIACHAK, MALDA,
P.S- PALGACHI,
DIST- MALDA, WEST BENGAL
PIN-732127

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, GUWAHATI-06

2:THE SECRETARY
TO THE GOVT. OF ASSAM

ENVIRONMENT AND FOREST DEPARTMENT

DISPUR
GUWAHATI-06

3:THE PRINCIPAL CHIEF CONSERVATOR
OF FORESTS AND HEAD OF FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-37

4:THE CHIEF CONSERVATOR OF FOREST
SOUTHERN ASSAM CIRCLE
SILCHAR
ASSAM

5:THE DIVISIONAL FOREST OFFICER
CACHAR DIVISION
CACHAR
SILCHAR
ASSAM

6:THE FOREST RANGE OFFICER
HAWAITHANG RANGE
SILCHAR
DIST- CACHAR
ASSAM

7:THE BEAT OFFICER
LAILAPUR
SUB-BEAT
UNDER HAWAITHANG RANGE
SILCHAR
DIST- CACHAR
ASSAM

8:THE OFFICER IN CHARGE
DHOLAI POLICE STATION
DHOLAI
CACHAR

DIST- CACHAR
ASSAM

9:THE OFFICER IN CHARGE
LAILAPUR OUT POST POLICE STATION
DHOLAI
CACHAR
DIST- CACHAR
ASSA

Advocate for the Petitioner : MR J I BARBHUIYA

Advocate for the Respondent : SC, FOREST

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

26.06.2023

Heard Mr. J. I. Barbhuiya, the learned counsel for the petitioner and Mr. D. Gogoi, the learned counsel appearing on behalf of the Forest Department, Government of Assam.

2. The instant writ petition has been filed challenging the confiscation of the vehicle of the petitioner bearing Registration No.WB-65D-0022 vide the order dated 13.05.2022 passed by the Authorized Officer-cum-Divisional Forest Officer, Cachar Division, Silchar.

3. The case of the petitioner herein is that the said order dated 13.05.2022 was passed without providing the opportunity to which the petitioner is entitled to in terms with Regulation 49 (5) (c) of the Assam Forest Regulation, 1891 and thereby affecting the right of the petitioner in terms with Regulation 46 (6) of the said Regulation.

4. On the other hand, Mr. D. Gogoi, the learned counsel appearing on behalf of the Forest Department submits that the notice dated 02.03.2022 was issued vide registered post with A/D to the petitioner thereby asking the petitioner to show case as to why the seized vehicle and the illegal teak sawn timber shall not be confiscated to the State. The learned counsel appearing on behalf of the Forest Department further has drawn the attention to the communication dated 31.03.2022 intimating the petitioner that in exercise of power under Regulations 49 (4), 59 5 (b) of

the Assam Forest Regulation, 1891, the petitioner was directed to produce the documents on 15.04.2022 at 11:00 AM in connection with the vehicle bearing Registration No.WB-65D-0022 seized under the Hawaithang Range, Dholai on 07.05.2021. Subsequent thereto, vide another order dated 31.03.2022, the petitioner was also intimated that the confiscation proceedings under Regulation 49 (4) (b) of the Assam Forest Regulation, 1891 was drawn up and the petitioner was asked to show cause as to why the mentioned truck bearing Registration No.WB-65D-0022 shall not be confiscated.

5. It is, therefore, the case of the respondent Forest Department that after following the due process, the order dated 13.05.2022 was passed whereby the vehicle bearing Registration No.WB-65D-0022 as well as the sawn timber were confiscated to the State of Assam. It is, therefore, the submission of Mr. D. Gogoi, the learned counsel appearing on behalf of the Forest Department that every opportunity was given to the petitioner for the purpose of proving in terms with Regulation 49 (6) of the Assam Forest Regulation, 1891.

6. The learned counsel appearing on behalf of the petitioner rejoining the submission made by the counsel for the respondent Forest Department submits that he has not received any of the communication dated 02.03.2022 (Annexure-F); the notice dated 31.03.2022 (Annexure-H) as well as the drawing up of confiscation proceedings (Annexure-H1). The learned counsel for the petitioner further submits that the said aspect would be apparent from a perusal of the order dated 03.03.2022 passed in the instant proceedings whereby this Court had given the opportunity to the petitioner to approach the Forest Department to release the vehicle

bearing Registration No.WB-65D-0022 by placing the relevant documents pertaining to the said vehicle in question as well as had also directed the respondent Forest Department to consider the release of the said vehicle of the petitioner, if the same was not further required for investigation of the case keeping the videograph, Chassis Number, Engine Number etc. The learned counsel for the petitioner, therefore, submits that these subsequent communications as have been enclosed to the affidavit-in-opposition as Annexure-F; Annexure-H and Annexure-H1 are communications manufactured in order to cover up the lapses on the part of the respondent Forest Department pursuant to the order dated 03.03.2022.

7. I have heard the learned counsels for the parties and perused the materials on record. The issue involved herein pertains to as to whether the order dated 13.05.2022 was passed by the respondent authorities by following the mandates in terms with Regulation 49 of the Assam Forest Regulation, 1891 and more particularly, Regulation 49 (5) (c) which entitles the petitioner to be afforded a reasonable opportunity of making representation within such reasonable time as may be specified in the notice against the proposed confiscating.

8. This Court upon perusal of Regulation 49 (6) of the Assam Forest Regulation, 1891 is also of the opinion that a valuable right is conferred upon the petitioner to prove to the satisfaction of the Authorized Officer that the truck in question was used without his knowledge or connivance or abetment or as the case may be, without the knowledge or connivance or abetment of his servant or agent and then all reasonable and due precautions had been taken against the use of the truck for the

commission of the forest offence.

9. Taking into account the above, claims and cross-claims made herein whereby the petitioner on one hand alleges that the notice dated 02.03.2022 (Annexure-F); notice dated 31.03.2022 (Annexure-H) as well as the drawing up of the confiscation proceedings vide communication dated 31.03.2022 (Anenxure-H1) were not received and on the other hand, the respondent authorities have categorically said that the said notices have been duly served upon the petitioner and due opportunity was given to the petitioner, this Court is of the opinion that it would be in the interest of justice that a further opportunity may be given to the petitioner to reply to the show cause notice dated 02.03.2022 (Annexure-F); notice dated 31.03.2022 (Annexure-H) as well as the drawing up of the confiscation proceedings vide communication dated 31.03.2022 (Anenxure-H1) in as much as Regulation 49 (6) of the Assam Forest Regulation, 1891 confers a valuable right upon the petitioner.

10. Accordingly, this Court, therefore, disposes of the instant writ petition thereby granting the petitioner to submit his replies to the show cause notice dated 02.03.2022 (Annexure-F); notice dated 31.03.2022 (Annexure-H) as well as the drawing up of the confiscation proceedings vide communication dated 31.03.2022 (Anenxure-H1) within 15 (fifteen) days from the date of the instant order.

11. The respondent authorities, upon filing of the replies by the petitioner to the communications referred to herein above within the time stipulated hereinabove, within 1 (one) month therefrom shall pass a reasoned order in terms with Section 49 of the Assam Forest Regulation, 1891.

12. This Court further clarifies that in view of the opportunity so given to the petitioner, the order dated 13.05.2022 whereby the petitioner's truck bearing Registration No.WB-65D-0022 was confiscated is hereby set aside. It is also clarified that in the circumstance the petitioner fails to submit his reply within the stipulated time given hereinabove, the order dated 13.05.2022 shall hold the field.

13. With the above observation and direction, the instant petition stands disposed of.

JUDGE

Comparing Assistant