

GAHC010185952023



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

Case No. : WP(C)/4853/2023

DLIP KUMAR AGARWALLA
S/O- LATE PRAHLAD AGARWALLA, R/O- JPR ROAD, DIST.- JORHAT, PIN-
785001

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT, DISPUR,
GUWAHATI- 781006

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
OFFICE OF THE PCCF AND HOFF
ARANYA BHAWAN
PANJABARI
GUWAHATI- 781037

3:THE DIVISIONAL FOREST OFFICER
JORHAT DIVISION
DISTRICT- JORHAT
ASSAM

4:THE CHAIRMAN
DISTRICT LEVEL ASSESSMENT BOARD COMMITTEE REPRESENTED BY
ITS DEPUTY COMMISSIONER
JORHAT
OLD COURT BUILDING JORHAT
PIN- 785001
ASSAM

5:THE COMMISSIONER OF TRANSPORT
PARIBAHAN BHAWAN
JAWAHARNAGAR
KHANAPARA
PIN- 781022
ASSAM

6:THE ADDITIONAL COMMISSIONER OF TRANSPORT
ASSAM
PARIBAHAN BHAWAN
JAWAHARNAGAR
KHANAPARA
PIN- 781022

7:THE DISTRICT TRANSPORT OFFICER
JORHAT
DTO OFFICE
RAJABARI
JORHAT
ASSAM

8:THE DISTRICT TRANSPORT OFFICER
CHARAIDEO
BORAHI TIN ALI
NEAR AXIS BANK
SONARI
PIN- 785690
DISTRICT- CHARAIDEO
ASSAM

9:THE SENIOR TECHNICAL DIRECTOR
NATIONAL INFORMATICS CENTRE (NIC)
LAST GATE
DISPUR
GUWAHATI- 781006

10:THE DIRECTOR (MVL)
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

GOVERNMENT OF INDIA
R.NO.233
TRANSPORT BHAVAN NO.1
PARLIAMENT STREET
NEW DELHI-110001

Advocate for the Petitioner : MRS R DEKA

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

18.06.2024

Heard Mr. B.D. Das, learned Sr. Counsel assisted by Ms. R. Deka, learned counsel appearing for the petitioner. Also heard Mr. I. Borthakur, learned counsel for the Forest Department and Ms. M.D. Borah, learned counsel for the Transport Department. Mr. H. Gupta, learned CGC appears for the respondent Nos. 9 & 10.

2. The petitioner's grievance is that the petitioner had bought 2 vehicles in an Auction conducted by the Forest Department. The vehicles had been confiscated by the Forest Department for carrying illegal timber. However, when the petitioner tried to register the said vehicles bearing registration Nos. RJ-23-GB-7786 and UP-84-T-4674 before the District Transport Officer (DTO), Charaideo and DTO, Jorhat, the petitioner was informed by the DTO, Charaideo and Jorhat that the Vahan Portal showed that the 2 trucks bought by the petitioner had been blacklisted by the Office of the Regional Transport Officer, Sikar, Rajasthan and Regional Transport Officer, Mainpuri, Uttar Pradesh.

3. The petitioner's counsel submits that it was the duty and the responsibility of the respondent forest authorities, as well as the concerned District Transport Authorities, to make necessary arrangements in order to register the vehicles in the name of the petitioner, as he was the successful bidder in a validly conducted Auction. Due to non-registration of the vehicles in his name, the

petitioner has preferred the instant writ petition, as despite investing an amount of Rs. 27,12,375/- [Rupees Twenty Seven Lakhs Twelve Thousand Three Hundred Seventy Five] in procuring the vehicles in question through the Auction process, the petitioner has not been able to get the two vehicles registered in his name.

4. Mr. Das, learned Senior Counsel for the petitioner has drawn the attention of this Court to sub-section [2] and sub-section [6] of Section 50 of the Motor Vehicles Act, 1988. As per sub-section [2] of Section 50 of the Motor Vehicles Act, 1988, if a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, the Government, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, is required to make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has his residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government. As per sub-section [6] of Section 50 of the Motor Vehicles Act, 1988, on receipt of such an application, the registering authority may cause the transfer of ownership to be entered in the certificate of registration. It is the submission of the petitioner's counsel that the petitioner has complied with all the formalities required on his part. Yet, the respondent authorities have not transferred the ownership of the two vehicles in his name.

5. The petitioner's counsel submits that as the petitioner could not register the said vehicles, due to the same being blacklisted by the Transport

Department of other States, the State respondents should ensure that the said vehicles are registered in the Transport Offices under Assam Government or in the alternative, refund the deposit of Rs.22,12,375/- made by the petitioner for purchase of the vehicles along with interest @ 15% per annum from the date of deposit of the said amount with the respondent authorities.

6. Mr. I. Borthakur, learned counsel for the Forest Department submits that he has received instructions to the effect that the auction money submitted by the petitioner against the purchase of two confiscated vehicles for an amount of Rs.22,15,000/- was accounted in the month of June, 2022 and deposited with the Government Exchequer. Hence, the auction money could not be returned to the petitioner. He also submits that the Forest Department was unaware that the Transport Authorities in Rajasthan and Uttar Pradesh had blacklisted the two vehicles purchased by the petitioner and no intimation had been given to the party who had financed the vehicles at the time of confiscation or during the selling of the vehicles by way of auction.

7. Mr. I. Borthakur submits that as the Forest Department had already sold the vehicles to the petitioner and as the same cannot be run on the roads by the petitioner within the country, the same can be sold by the petitioner as scrap metal. He submits that a copy of the tender notice dated 23.03.2022 auctioning the vehicles, shows that a copy of the tender notice had also been given to the District Transport Officer, Jorhat for information.

8. Ms. M.D. Borah, learned counsel for the Transport Department submits that prior to auctioning the confiscated vehicles, the Forest Department had not

made any request to the Transport Department with regard to whether there was any impediment for the Forest Department to auction the confiscated vehicles. She submits that the concerned District Transport Officer of Jorhat and Charaideo were unable to register the petitioner's vehicles in the Vahan Portal under the option "New registration against auction/confiscated vehicles", as the vehicles were blacklisted by the Regional Transport Officer, Sikar, Rajasthan and Regional Transport Officer, Mainpuri, Uttar Pradesh. She further submits that the DTO, Jorhat had written a letter dated 02.06.2023 to the Addl. Commissioner of Transport, Assam stating that the Forest Department had requested the transfer of ownership of the petitioner's vehicles which had been sold in an auction, in the petitioner's name. However, the said vehicles were put under hypothecation with Chola mandalam Investment and Finance Co. Ltd., Jaipur and Hinduja Leyland Finance Ltd. Farrukhabad. Further, vide letter dated 09.09.2023 issued by the Commissioner of Transport, Assam, the Director (MVL), Ministry of Road Transport & Highways, Transport Bhawan, New Delhi was requested to look into the matter of transfer of ownership of auctioned vehicles, registered under the registering authority of other states.

9. Mr. H. Gupta, learned CGC submits that as per instructions received by him, Section 50(2) of the Motor Vehicles (MV) Act, 1988 provides for transfer of ownership and that a person who has purchased or acquired a motor vehicle at a public auction conducted by, or on behalf of the government, is to make an application for the purpose of transferring the ownership of the vehicle in his name to the registering authority, in whose jurisdiction he has his residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee and within such period as may be

prescribed by the Central Government. Further, in terms of Rule 57 of the Central Motor Vehicles Rules, 1989, a person who has acquired or purchased a motor vehicle at a public auction, shall make an application in Form 32 within thirty days of taking possession of the vehicle to the registering authority accompanied by- (a) the appropriate fee as specified in rule 81; (b) the certificate of registration and insurance; (c) the certificate or order confirming the sale of the vehicle in his favour duly signed by the person authorised to conduct the auction; (d) the certified copy of the order of the Central Government or State Government authorising the auction of the vehicle; (e) driving licence and permit in case of transfer of ownership of E-rickshaw and E-cart; and (f) proof of identity of nominee, if any.

10. The learned CGC submits that as per the letter dated 09.10.2023 issued by the Under Secretary to the Government of India, Ministry of Road Transport and Highways, which has been addressed to him, the flagging/blacklisting of vehicles in Vahan can only be carried out and removed by the parent Regional Transport Office and other authorities would be permitted to send a request electronically to the parent RTO through the system.

11. I have heard the learned counsels for the parties.

12. The basic issue to be decided is whether the respondent Forest Department would have to refund the amount payable to the petitioner along with interest, as the vehicles could not be registered in the Assam, due to the same being blacklisted in other States.

13. As can be culled out from the submissions made by the parties and on perusal of the pleadings, it can be seen that pursuant to a Tender Notice dated 23.03.2022 issued by respondent no. 3 for disposal of confiscated vehicles, the petitioner had participated in the Tender process and emerged as the successful bidder in respect of two Vehicles [Trucks] bearing Registration nos. [i] UP-84/T-4674; and [ii] RJ-23/GB-7786, which figured at Serial nos. 8 & 10 of the Tender Notice dated 23.03.2022. Accordingly, Settlement Order dated 15.06.2022 had been issued in respect of the said two vehicles in favour of the petitioner by the respondent no. 3. After depositing the settlement amount along with GST & I.T, the petitioner had taken the confiscated vehicles in compliance with the Lifting Order dated 21.06.2022 issued by the respondent no. 3. Thereafter, the petitioner had made several requests, as well as served Notices to the respondent forest authorities to take necessary steps for registration of the said two vehicles in his name. Though same steps were taken by the respondent forest authorities, by sending written communications to the respective Transport Authorities in which the two vehicles were originally registered [i.e. Rajasthan and Uttar Pradesh Transport authority] for cancellation of registration of the vehicles, nothing has come of it. The petitioner had also submitted an application dated 18.02.2023 before the respondent no. 7 for registration of the two vehicles in his name, but till date no discernible steps appear to have been taken by the respondent no. 7. Finding no other alternative, the petitioner had also approached the DTO, Charaideo (respondent No. 8) for registration of the two confiscated vehicles in his name. In response to the petitioner's request, the respondent no. 8 issued letters no. DTO/CDO/Office ESSTT/2023/305 dated 18.02.2023 requesting the respective Regional Transport Offices of Sikar, Rajasthan and Mainpuri, Uttar Pradesh to withdraw the vehicles from the

"Blacklisted" category in the Vahan Portan and place it in the Confiscated/Auctioned vehicles category in the Portal, for transfer of the ownership of the said two vehicles in the name of the petitioner. In the month of June, 2023, the petitioner came to know that by a letter dated 02.06.2023 sent by the respondent No. 7 to the respondent no. 6 that as per information available in vahan.parivahan.gov.in Portal, the two vehicles in question were blacklisted and hypothecated with some private financiers in the respective States of registration.

14. Section 50 of the Motor Vehicles Act, 1988 states as follows-

“50. Transfer of ownership - (1) Where the ownership of any motor vehicle registered under this Chapter is transferred,-

(a) the transferor shall,--

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under section 48; or

(B) in a case where no such certificate has been obtained,--

(I) the receipt obtained under sub-section (2) of section 48; or

(II) the postal acknowledgement received by the transferee if he has sent an application in this behalf by registered post acknowledgement due to the

registering authority referred to in section 48,

together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where--

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,

the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) hereafter in this section referred to as the other person fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority."

15. As can be seen from the documents on record, the Divisional Forest Officer, Jorhat Division had written letters dated 19.07.2022 to the RTO, Sikar, Rajasthan and RTO, Mainpuri, Uttar Pradesh requesting cancellation of the vehicle registration Nos. RJ-23-GB-7786 and UP-84-T-4674 respectively, as they had been put on sale through a tender process and had been settled with the petitioner. However, the RTO authorities of Rajasthan and Uttar Pradesh have declined to cancel the registration of the auctioned vehicles due to the same being blacklisted, so as to enable the RTO authorities in Assam to register the vehicles in Assam. Due to the non registration of the said vehicles, the petitioner is unable to run the said vehicles. The tender notice issued by the Department of Environment & Forests for auctioning the two trucks bought by the petitioner shows that the vehicle bearing registration No.UP-84-T-4674 has a reserved price of Rs.6,00,000/- and the vehicle bearing registration No.RJ-23-GB-7786 has a reserved price of Rs.11,00,000/-. However, the vehicles were settled with the petitioner in the auction at a total cost of Rs.27,12,375/-, which is as

follows-

Sl. No.	Vehicle No.	Govt. Value (in Rs.)	Bid Value (in Rs.)	Settled amount (in Rs.)	GST	I.T	Remarks
1	UP-84-T-4674	6,00,000.00	7,50,000.00	750000	1,35,000.00	19,125.00	
2	RJ-23-GB-7786	11,00,000.00	15,00,000.00	1500000	2,70,000.00	38,250.00	

16. In terms of Section 50 of the M.V. Act, 1988, the Forest Department had asked the Transport Authorities in Rajasthan and Uttar Pradesh to cancel the vehicles registration numbers that had been registered with them. At the same time, the Forest Department had also requested the Transport Authorities under the Government of Assam to register the vehicles that were auctioned off and purchased by the petitioner. This request was made to the Transport Department, only after the vehicles had been auctioned and purchased by the petitioner.

17. It was the duty of the Forest Department to ensure that the said vehicles that were auctioned off did not have any encumbrance at the time of auction, by making preliminary inquiries with the Transport Department of various States. However, they failed to do the same.

18. The above being said, it is surprising that the Forest Department has now taken a stand that they cannot return the auction money to the petitioner for purchasing the two trucks, even though the two trucks cannot be registered in

the petitioner's name. It is further surprising that the counsel for the Forest Department has made a submission to the effect that the two trucks purchased by the petitioner should be sold off by way of scrap metal. The Forest Department could not have and should not have auctioned off the two trucks, without making a prior inquiry as to whether the two trucks were encumbered in any manner, by enquiring with the Transport Authorities of the registering States. Once it had come to the knowledge of the Forest Department that the two blacklisted trucks could not be registered in the State of Assam and that the petitioner would not be able to register the said trucks in his name, it was the responsibility/duty of the Forest Department to refund the Auction money paid by the petitioner. However, the Forest Department has left the petitioner high and dry after selling him the trucks that are of no use to anybody. This action and attitude is not expected of a Government Department. The totally heartless attitude of the officials concerned has to be deprecated. The letter issued by the DFO, Jorhat Division, Jorhat to the PCCF and Head of Forest of Assam dated 03.06.2024 is reproduced below as follows :-

“Sub: WP(C) NO.4853/2023 (Sri Dilip Kumar Agarwala Vs. The State of Assam).-reg.

Ref: Your office letter No. FE.1/WP(C)No.4853/2023, dtd.06-05-2024.

Sir,

With reference to the subject cited above, I have the honour to furnish herewith the detailed report regarding WP(C) NO.4853/2023 are as follows:

1) The auction money submitted by the petitioner Sri Dilip Kumar Agarwala against purchase of 2 (two) nos, of confiscated vehicles (i.e. UP-84-T-4674 & RJ-23-GB-7786) an amount of Rs. 22,50,000.00 (Rupees twenty two lakhs fifty thousand only) was accounted in the month of June/2022 and deposited to the government exchequer and hence the auction money can not be returned to the petitioner.

2) Again, it was unaware that the transport authority in Rajasthan and Uttar Pradesh had blacklisted the said 2 Nos. vehicles and no intimation was given to the finance party of the vehicles in the time of confiscation and during subsequent selling of the vehicle by way of auction.

This is for favour of your kind information and necessary action.”

The above letter is made a part of the record and marked as Annexure-X.

19. As the Transport Department Authorities have not been able to register the vehicles in the name of the petitioner in Assam, due to the reasons stated above, the vehicles would have to be taken back by the Forest Department and the Auction money refunded to the petitioner. In view of the trouble caused to the petitioner due to the carelessness of the Forest Department in not making any prior enquiry, as to whether the vehicles were encumbered in any manner prior to the auction and the stand taken by them that the petitioner's money cannot be returned, this Court finds that the said decision of the Forest Department is totally unreasonable and heartless. The petitioner cannot be made to suffer due to the fault of the State respondents, for not making a prior inquiry with regard to whether the two trucks could be sold by way of a public auction. This decision of the Forest Department is completely arbitrary and in

violation of the laws equity.

20. In view of the reasons stated above, the respondent Nos. 2 & 3 are directed to take back the petitioner's trucks immediately and thereafter refund the total amount of Rs.22,12,375/- to the petitioner, within a period of one month from today. This Court also of the view that the interest on the amount deposited by the petitioner should be paid to him @ 6% per annum with effect from the date of deposit of the said amount by the petitioner with the Forest Department till final re-payment of the principal amount.

21. Besides the above, the Divisional Forest Officer, Jorhat Division, Jorhat is directed to pay cost of Rs.10,000/-, within a period of one month from today. The said amount of Rs.10,000/- shall thereafter be disbursed to the Assam State Legal Services Authority.

22. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant