

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4174 of 2017

=====

Rajnish Raj, son of Vinod Singh, resident of village Bamhaur, P.S. Shivsagar,
District Rohtas

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Forest Department Government of Bihar, Patna.
2. The Chief Conservator of Forest Bihar, Patna.
3. The District Magistrate Rohtas, Sasaram.
4. The Authorized Officer Cum Divisional Forest Officer Rohtas, Sasaram.
5. The District Forest Officer, Rohtas, Sasaram.
6. The Range Officer Sasaram Forest Area at Sasaram.
7. The Forestor Tilauthu cum Darigaon, Forest Circle, District- Rohtas.

.... Respondents

with

=====

Civil Writ Jurisdiction Case No. 10969 of 2017

=====

Narendra Singh, S/o Ram Naresh Singh, R/o Mohalla- Fazalganj, P.S.- Sasaram,
District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Forest Department Government of Bihar, Patna.
2. The Chief Conservator of Forest Bihar, Patna.
3. The District Magistrate Rohtas, Sasaram.
4. The Authorized Officer Cum Divisional Forest Officer Rohtas, Sasaram.
5. The District Forest Officer, Rohtas, Sasaram.
6. The Range Officer Sasaram Forest Area at Sasaram.
7. The Forestor Tilauthu cum Darigaon, Forest Circle, District- Rohtas.

.... Respondents

=====

Appearance :

(In CWJC No.4174 of 2017)

For the Petitioner/s : Mr. Uma Shankar Singh, Adv.

For the Respondent/s : Mr. Dhurjati Kr. Prasad, GP14

(In CWJC No.10969 of 2017)

For the Petitioner/s : Mr. Uma Shankar Singh, Adv.

For the Respondent/s : Mr. Dhurjati Kr. Prasad, GP14

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-01-2018



Heard learned counsel for the parties in the two writ petitions which are filed feeling aggrieved by the order of rejection of the application filed by the two petitioners for provisional release of their respective vehicles pending disposal of the confiscation proceedings impugned at Annexure 6 to the respective writ petitions.

The orders are prototype and except for the individual details there is nothing in the order which would reflect an application of mind. No doubt, the vehicles have been seized on allegations of Forest Offences but the offences so alleged against the petitioners who are vehicle owners, are yet to be established in the proceedings which remains pending since 2016. It is taking note of the situation that this Court while considering the respective writ petition of these petitioners for provisional release of their vehicles, had directed the Authorized Officer cum Divisional Forest Officer, Rohtas, to consider the prayer and dispose of the same in accordance with law which order was passed almost a year and half ago and though by cyclostyled orders the prayer has been rejected on 16.9.2016 in so far as C.W.J.C.No. 4174/2017 is concerned and on 27.10.2016 in so far as second writ petition is concerned but it is an admitted position that a period of almost 15 months has gone by, yet the confiscation cases remain pending.

Each of the two writ petitions encloses a Challan/ Transport



permit in support of transportation of the forest produce which according to the petitioners supports the transportation. It is also the case of these petitioners that they had no knowledge as to any infirmity in those challans but these are matters to be looked into by the Authorized Officer cum Divisional Forest Officer, Rohtas at Sasaram. As for present there can be no explanation as to why these confiscation cases have remained pending for over a year and half and despite the directions of this Court earlier passed.

The judgment relied upon by Mr. Dhurjati Kumar Prasad, learned GP-14, reported in (2004)1 SCC 293 (**Section Forester & anr. V. Mansur Ali Khan**) does lay down guidelines for directing such release but then it does not put a stop altogether rather each case has to be considered on its own merits in the light of the guidelines so laid. In fact a Co-ordinate Bench of this Court while considering this very issue on provisional release of vehicles which remained pending due to long drawn confiscation proceedings, in a matter arising from C.W.J.C.No. 2942/2013 (**Dhananjay Kumar vs. the State of Bihar & ors.**) and batch of cases, which related to the district of Rohtas, after taking note of the judgment(s) relied upon by Mr. Prasad as well as other judgments on the issue, issued directions to the Divisional Forest Officer, Rohtas at Sasaram which are in a nature of general directions and was required to be followed by him while dealing with



such issues but has been overlooked by him. The directions issued by this Court reads under:

“ In the circumstances, taking into account overall aspect of the matter, this Court is of the view that the Divisional Forest Officer should adopt the following procedure, in addition to the procedure laid down in the Act by State Amendment, in cases pending before him or instituted henceforth for some forest offence(s):-

- (I) After the vehicle is seized with or without incriminating articles from forest area on the suspicion of being used in commission of any forest offence and an FIR is instituted with the local police, the institution of the FIR and the seizure must be reported immediately to the competent authority for registering a forest case.
- (II) On receipt of the report, the competent authority must register the case on that very day and thereafter get the ownership of the vehicle verified from the concerned Transport Office and send a registered notice along with seizure memo to the owner of the vehicle through registered post with acknowledgment due positively within two weeks. In the notice, the owner should be allowed two week time, from the date of receipt of the notice, to appear in the proceeding and file his defence. It is very common that the notices by post are not served or the noticee avoids to receive the same. Hence, simultaneously, with the issue of notice by



registered post, the competent authority must get a notice published in the local newspapers with regard to seizure of the vehicle with the registration number, chassis number and engine number and other details as may be available and the date, place and time of seizure of the vehicle with brief of charges and the number of proceeding initiated in the matter. If within 15 days of publication of notice in the newspaper, the owner or any claimant of the vehicle does not appear before the competent authority in the proceeding, the competent authority shall be at liberty to proceed ex parte. If the competent authority is able to find out from the papers seized with the vehicle or from any source that the vehicle has been purchased under hire purchase agreement with any insurance company, he shall also send information to the said company, simultaneously, through registered post that the vehicle has been seized for forest offence(s) and is a subject of a confiscation proceeding before him.

- (III) In case, the owner/claimant appears and files his defence totally denying seizure of his vehicle on the date, time and place alleged, the prosecution shall lead evidence first in support of the factum of seizure of the vehicle from a forest area at the particular time and date and loaded with incriminating article, if any. Once the prosecution produces evidence to this effect, onus will shift, in terms of Section 52(5) of State Amendment, on the



owner/ claimant of the vehicle to establish his defence of innocence.

- (IV) Evidence in the case must commence within 15 days of the filing of the defence by the owner/ claimant. Thereafter the proceeding should continue and progress, without any unnecessary delay and must conclude within four months from the date of institution of the case before the competent authority.
- (V) In case the proceeding does not conclude within the said four months, for no fault of the owner/ claimant of the vehicle and in spite of his full co-operation, the competent authority shall release the vehicle on provisional basis together with its attachments, if any, to the owner of the vehicle on the following terms:-
- (i) He shall ascertain the deprecated value of the vehicle as on the date of institution of the case in his court, calculated by Insurance Company where the vehicle is insured or by any competent authority and shall direct the owner to furnish bank guarantee of that amount.
 - (ii) He shall also direct the owner to furnish two sureties in his support out of which one should be a government official.
 - (iii) He shall also direct for deposit of security in the form of ownership papers of immovable property, standing in the name of the owner of the vehicle, equal to the depreciated value of the vehicle.



- (iv) He shall also direct the owner to furnish an undertaking that, on the date of final orders in the confiscation proceeding, he shall produce the vehicle with all its attachment, as released on provisional basis, and in the same condition, for any appropriate orders by the competent authority.
- (v) On the owner meeting all these conditions the vehicle with all its attachments shall be released to him on provisional basis within one week positively which shall be subject to the final result of the confiscation proceeding.

It is made clear that these directions are to be treated as in addition to the procedure laid down in law for conduct of such proceeding by the State Amendment and not in conflict or in ignorance of them.

In this batch of cases, there are many cases in which the confiscation proceeding is pending since more than a year and definitely since last more than four months, and at different stages. In the circumstances, this Court directs that all the pending proceedings before the respondent Divisional Forest Officer, which are pending since more than four months, and at different stages, must be concluded and final orders must be passed in accordance with law positively within three months from the date of receipt/ production of a copy of this order, failing which he shall take steps for release of the respective vehicles on provisional basis in the manner laid down hereinabove.

Lastly, this Court observes that the holding of quasi-judicial proceeding by the Divisional Forest Officer in the



matter must take precedence over his administrative works, as it threatens the infringement of Constitutional Right of a Citizen, and must be given priority to ensure time bound conclusion of the same as laid down herein.

The writ applications are disposed of.”

Although according to Mr. Prasad these issues were not raised by the petitioners at the time of pressing their application for provisional release as would be manifest from their application so enclosed in the respective writ petition but in my opinion, these issues were raised before this Court in these writ petitions which have remained pending for almost a year now, it did not stop the Divisional Forest Officer, Rohtas to respond to the writ petition which they have failed to do.

Since in my opinion the petitioners as a transporter relied upon the chalaans/ permits enclosed in the writ petitions for the transportation and its genuineness is yet to be adjudicated, in the proceedings, the petitioners have made out a case for indulgence.

Having heard learned counsel for the parties and for the discussions noted hereinabove, I direct the Divisional Forest Officer, Rohtas at Sasaram to release the vehicles of the petitioners within four weeks of receipt/ production of a copy of this judgment subject to such stipulations and conditions as he deems fit and proper, which



release shall be subject to final outcome of the respective confiscation proceeding.

The writ petitions are allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2018
Transmission Date	NA

