

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1454 of 2021

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Wakil Singh Son of Sitaram Singh, resident of Baily Road Officer Flat, Patna,
at present resident of Village - Tendue, Dusadhi, Police Station - Dehri,
District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Forest and Environment, Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Divisional Forest Officer-cum-Authorised Officer, Rohtas, Forest Division, Rohtas at Sasaram.
4. The Forester, Tilauthu, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Tiwary, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 06-12-2021

Petitioner has prayed for the following relief(s):

“For quashing the order dated 5.12.2019 passed in Forest Revision Case No. 22 of 2018 passed by the Principal Secretary Environment and Forest (Respondent No.1) by which Forest Revision Petition has been dismissed on imaginary ground affirming the order dated 5.12.2017 passed in Forest Confiscation Appeal No.61 of 2015 passed by the District Magistrate, Rohtas at Sasaram



(Respondent No. 2) which affirmed the order dated 5.10.2015 passed in Confiscation Case No. 97/2015 passed by Divisional Forest Officer-Cum-Authorised Officer, Rohtas at Sasaram (Respondent No. 3) whereby and whereunder illegally confiscating the vehicle (Truck) of the petitioner and also pray for release of the vehicle during pendency of the application. And any other order/orders, direction/directions, writ/writs which may be petitioner entitled to.”

This writ petition has been filed for quashing the order dated 05.12.2019 passed in Forest Revision Case No. 22 of 2018 by Principal Secretary, Department of Environment and Forest, Bihar dismissing the revision petition and affirming the order dated 05.12.2017 passed in Confiscation Appeal No. 61 of 2015 by the District Magistrate, Rohtas at Sasaram affirming the order dated 05.10.2015 passed in Confiscation Case No. 97 of 2015 passed by Divisional Forest Officer-cum-Authorized Officer, Rohtas, Forest Division, Rohtas at Sasaram by which the vehicle (truck) of the petitioner has been confiscated for carrying the forest goods.

It is alleged that stone chips illegally mined from protected forest area was being transported on the truck of petitioner and the said truck was intercepted by the forest guard and truck driver and the person accompanying could not show



any valid transit permit of the stone chips and thereafter the truck was seized and the driver was arrested for violation of the provisions of the Forest Act and thereafter 600 cubic ft. of stone chips loaded on the truck was also seized for contravening Section 33, 41 and 42 and 52 of the Indian Forest (Bihar Amendment, 1990) Act, 1927 (hereinafter referred to as Forest Act for short) and a seizure-list was prepared and the apprehended driver was forwarded to the nearest Sub-divisional Judicial Magistrate and thereafter, under Section 52(3) of the Forest Act, proceedings for confiscation of the truck and stone chips were initiated, giving rise to Forest Case No. 45F of 2015 and Confiscation Case No. 97 of 2015.

Show cause was submitted by the petitioner before the authorized Officer and in his defence, two witnesses were also examined. It was submitted on behalf of the petitioner that before the authorized Officer he had produced transit permit to transport the stone chips on his truck and same was disbelieved by Authorized Officer, on flimsy ground without recording any finding with respect to its genuinity.

The authorized Officer, after noting the relevant submissions and case of the parties, has abruptly come to the conclusion that the seized truck was involved in transportation



of illegal stone chips without any valid permit, although the permit was produced by the owner of the truck, however, there is no finding recorded by the authorities with respect to transit permit which contained the registration number of the truck as well as place from where stone chips were loaded and its destination.

The authorized officer has to be *prima facie* satisfied on the basis of materials on record that the stone chips loaded on the truck have been excavated from the protected forest area and forest offence has been committed by the petitioner for which department has to produce evidence in order to establish that the seized stone chips is a forest produce and same has been excavated from the protected forest area and only thereafter the burden shifts upon the owner of the truck that the forest produce was being transported without his knowledge or connivance. There being no such finding recorded by the authorized officer and also in view of the fact that initial burden lies upon the department to establish that seized stone chips are forest produce and forest offence has been committed, particularly, when the truck and stone chips were seized outside the forest area.

In such view of the matter the order passed by the



authorized officer as well as appellate authority and revisional authority, is not sustainable in law. The orders passed by the authorities also lacks proper application of mind and has been passed in a mechanical manner.

Accordingly, the orders passed by the authorized Officer, the appellate authority and revisional authority are set aside and the matter is remanded to the court of authorized Officer-cum-D.F.O., Rohtas for *de novo* proceeding.

It shall be open for the petitioner to file an application before the authorized Officer for provisional release of his truck which shall be decided by the authorized Officer in accordance with law within a period of 30 days from the date of filing of such application.

Petition is disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2022
Transmission Date	NA

