

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16213 of 2017

Shivaji Singh S/o Sri Ramdeo Singh Resident of Village/Mohalla - Chandni Chowk, Ward No. 11 Lakh, P.S. Buxar, District - Buxar.

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Advocate

For the Respondent/s : Mr. Jay Prakash Sharma, AC to EX G.P.-21

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

Date : 16.08.2023

Heard Mr. Alok Ranjan, learned Counsel for the
petitioner and learned Counsel for the State.

2. The present petition has been preferred for the
following reliefs:-

*i) for a writ particularly in the
nature of Certiorari for Quashing and setting aside
the order dated 24.12.2014 Confiscation Case no.
94/2014 passed by the Divisional Forest officer
cum Authorized officer Rohtas, Sasaram holding
that the vehicle of the petitioner was engaged in*



illegal mining work and for further quashing of the order dated 17.06.2015 passed in Forest Confiscation Appeal no. 5/2015 passed by the District Magistrate Rohtas, Sasaram affirming the order passed by the Divisional Forest officer cum Authorized officer Rohtas, Sasaram and for further quashing and setting aside the revisional order dated 03.10.2017 passed in Forest Revision case in 21 of 2015 passed by Principal Secretary, Environment and Forest Department, Bihar, Patna affirming the order passed by the Divisional Forest Officer and District Magistrate Rohtas, in a very mechanical and illegal manner, without considering the material available on the record and without considering the evidences relied on by the petitioner;

ii) for a writ particularly in nature of Mandamus commanding and directing the respondents to release the vehicle bearing registration no. BR-44-G/2235 of the petitioner after taking appropriate securities or conditions as laid down by the order passed by the Hon'ble



court, passed in LPA No. 306 /2017 and LPA No. 624 of 2017 and LPA No. 1647/2015;

iii) for writ in nature of Mandamus commanding and directing the respondents to release the vehicle in question of the petitioner after taking appropriate securities.

3. The short facts of the case is/are as follows:-

4. The petitioner is the owner of the vehicle having Registration No. BR-44-G-2235 (Truck) which was purchased after taking loan from the finance company.

5. It was seized on 26.11.2014 by the Forest authorities from Village- Fakli- Kargahar road while returning from Domchah (Kodarma), Jharkhand on suspicion of being involved in illegal mining operation under protected forest area.

6. Accordingly, the confiscation proceeding vide Confiscation Case No. 94 of 2014 was initiated with respect to the aforesaid vehicle before the Divisional Forest Officer -cum- Authorized Officer, Rohtas at Sasaram.

7. The petitioner appeared and filed his show cause bringing on record the road *challan*/receipt (toll tax) as also the purchase receipt of the stone chips from Domchah, Jharkhand.



8. During the pendency of the proceeding, the petitioner moved this Court in CWJC No. 21447 of 2014 which was heard along with other batch cases and vide an order dated 01.04.2015, the Hon'ble Court disposed of the writ petitions directing the authorities to provisionally release the trucks after fulfilling certain conditions (Annexure 1 to the writ petition).

9. Alongwith certified copy of the order, when the petitioner preferred representation before the concerned authority, he came to know that the truck already stands confiscated vide an order dated 24.12.2014. It further came to notice that the said application was dismissed without even examining a single witness and/or giving any opportunity to the petitioner to cross-examine the witnesses produced by the prosecution.

10. According to the petition, the entire proceeding was thus vitiated and done in an illegal manner, against the *principal of natural justice* and further against the order passed by the High Court in **Dhananjay Kumar and Ors. vs. The State of Bihar** reported in **2013 (4) PLJR 849** (Annexure 2 to the petition).

11. Aggrieved, the petitioner preferred appeal before the Collector- cum- Appellate authority bearing appeal



no. 05 of 2015 who too in a very mechanical manner rejected the same vide an order dated 17.06.2015 (Annexure 3 to the petition).

12. Still aggrieved, revision was preferred before the Revisional Authority, the Secretary, Forest and Environment Department, Bihar, Patna vide Forest Revision No. 21 of 2015 which was dismissed on 03.10.2017 completely ignoring the materials on record as also the order passed by the Hon'ble Apex Court and Patna High Court. (Annexure 5 to the petition).

13. Left with no option, the present writ petition.

14. Heard the parties.

15. It is the case of the petitioner that the Truck in question was moving from Domchah, Jharkhand after loading the stone chips under valid challan. Further, it was intercepted and confiscated at village-Fakli-Kargahar road which is a public road and not a protected forest area.

16. Further, the petitioner wanted interim relief/release of the vehicle till the pendency of the petition, the same was allowed by a bench of this Court alongwith other batch cases in CWJC No. 21447 of 2014 but in a hurry and only to defeat the said order without adducing any evidence and/or allowing the petitioner to examine/cross examine the evidences



against him, the order was passed by the concerned authority.

17. He submits that reason for coming to the conclusion that the Truck was having stone chips from the protected forest has not been elaborated and further the learned Court took the decision only on the ground that proper documents were not produced at the time when the vehicle was intercepted.

18. He further submits that the contention put forward by the petitioner before the concerned authority that:-

- (i) he is/was the owner of the vehicle;
- (ii) the stone chips were loaded from Domchah (Kodarma), Jharkhand;
- (iii) the same was seized at village-Fakli, Kargahar road which is not a protected forest area;
- (iv) there is no eye witness to the said seizure;
- (v) valid documents were on record.

19. Learned Counsel for the petitioner however, submits that on erroneous ground, it came to the conclusion that:

- (i) it has been loaded from Gopi Bigha Mauza;
- (ii) no document/ witness/ evidence were produced;



(iii) the stone chips present in the vehicle confirmed that it was from Fazilpur protected forest and;

(iv) as such, the vehicle in question stands confiscated.

20. Learned Counsel submits that as the Appellate Authority and Revisional Authority chose to cut-paste the findings of the original authority, he had no option but to invoke the writ jurisdiction of this Court.

21. He has taken this Court to an order of the Patna High Court in the case of **Dhananjay Kumar (supra)** in which the Court had taken note of the fact that :

(i) in all the cases the stand of the State was that vehicles have been seized by the Forest Officials loaded with forest produced from forest area;

(ii) were involved in commission of forest offences and were transporting forest materials and/or involved in illegal mining;

(iii) have no valid challan or permit;

(iv) the stand of the vehicle of the owners were that it was/were not seized from the forest area;

(v) provisional release necessary to save the vehicle.



22. Learned Counsel again took this Court to paragraph 8 of the said order which reads as follows:-

“In the circumstances of the matter, taking into account overall aspect of the matter, this Court is of 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 alongwith 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 weeks 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 established 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.”

23. He further took this Court to another order of **Patna High Court in CWJC No. 10454 of 2018** passed by a co-ordinate bench (Hon’ble Mr. Justice Sanjay Priya, as his Lordship then was) on **01.04.2019** which was dealing with the writ petition after the Authorized Officer had passed an order for confiscation of vehicle. The appeal was rejected by the Collector and further the revision was also rejected by the Revisional authority.

24. In the said case, the Court after hearing the parties held as follows:-

“This Court, after perusing the impugned orders as contained in Annexures- 8, 9 and 10, finds that all the concerned authorities



have not taken into consideration the documents filed on behalf of petitioner during hearing of the matter and have passed impugned orders directing the confiscation of the three trucks of the petitioner loaded with stone chips.”

25. He as such, submits that taking into account the fact that without looking into the merits of the case, the evidence on record and the facts placed before the authorized authority, the order has been passed which is fit to be quashed.

26. The State has filed its counter affidavit on behalf of the respondent nos. 3 and 4 namely, the Chief Forest Conservator of Forest Bihar, Patna and the District Magistrate, Rohtas, Sasaram and they have narrated the facts leading to the confiscation, rejection of appeal as also the revisional order.

27. The sum and substance of the reply filed by the respondent is/are that in view of the fact that pursuant to several orders of the Hon'ble Supreme Court relating to conservation of wildlife, ecology and environment, the precautionary principle has to be made applicable and in continuance of that the regular raids are being conducted and in this case also, it was found that the Truck was carrying stone chips from protected forest. As no document was produced, accordingly, the order in question was/were passed.



28. Having gone through the facts of the case, the materials on record and the submissions put forward by the learned Counsels appearing on behalf of the petitioner and the State, this Court finds force in the submissions put forward by the learned Counsel for the petitioner.

29. The claim of the petitioner is/was that the Truck was intercepted/seized at the place near Kargahar road which under no circumstance can be considered a protected area.

30. Further, it has produced the valid *challan* relating to the stone chips that was loaded on the truck to show that it was loaded from Domchah (Kodarma), Jharkhand.

31. In that view of the matter, the Authorized Authority was duty bound to adduce the evidences on the points raised by the petitioner and have come to the conclusion whether the same is genuine or not, whether the '*challan*' has been issued by appropriate authority or not and further whether the same can be taken into consideration or not.

32. Further, in the backdrop of the repeated assertion of the petitioner that the same was loaded from Domchah (Kodarma), Jharkhand, the same again had to be examined/evidences adduced to come to a conclusion whether it



was loaded from the said place or not.

33. Further, the petitioner should have been given a chance to cross examine the facts/assertions of the respondent authorities that it was loaded from the protected forest area and as such, was fit to be confiscated.

34. There is no such finding on record by the Authorized Officer and/or the reason for coming to a definite finding that the stone chips belong to the protected forest.

35. In that view of the matter, the order passed by this Court in **Dhananjay Kumar (supra)** comes into picture that in case, the owner/claimant appears and files his defence, the prosecution shall lead evidence first in support of the factum of seizure of the vehicle from a forest area loaded with incriminating article, if any.

36. 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.

37. As stated above, no such evidence was adduced and in its absence, the natural consequences will be the quashing of the impugned orders dated 24.12.2014 in Confiscation Case No. 94 of 2014 (Annexure 2 to the petition),



the order dated 17.06.2015 in Forest Appeal Case No. 05 of 2015 and analogous cases (Annexure 3 to the petition) and order dated 03.10.2017 in Forest Revision Case No. 21 of 2015 (Annexure 5 to the petition).

38. Accordingly ordered.

39. The impugned order dated dated 24.12.2014 in Confiscation Case No. 94 of 2014 (Annexure 2 to the petition), the order dated 17.06.2015 in Forest Appeal Case No. 05 of 2015 and analogous cases (Annexure 3 to the petition) and order dated 03.10.2017 in Forest Revision Case No. 21 of 2015 (Annexure 5 to the petition) are hereby set aside. The Divisional Forest Officer, Rohtas at Sasaram is directed to release the vehicles of the petitioner after verification of all the papers within a period of eight weeks from the receipt of the copy of the order.

40. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	03.08.2023
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