

D/L. 18.
October 13, 2023.
MNS.

WPA No. 13826 of 2023

Shaikh Majid Shaikh Chand
Vs.
State of West Bengal and others

Mr. Sunil Kumar Gupta,
Mr. Subhankar Chatterjee

... for the petitioner.

Mr. Suman Ghosh

...for the State.

1. Learned counsel for the petitioner contends that the petitioner's vehicle was confiscated on the allegation that it was in contravention of the provisions of the Indian Forest Act, 1927 (1927 Act), since contraband timber was being carried on the said vehicle.
2. Learned counsel appearing for the petitioner argues that the petitioner, being a resident of Maharashtra, was in no way aware of any such contravention. The driver of the vehicle-in-question, which was in Assam and picked up the cargo from there and was travelling through West Bengal, is also illiterate.
3. In any event, it is submitted that even after the stipulated period, no action was taken by the

respondent authorities in terms of the 1927 Act.

4. It is pointed out that under Section 53 of the 1927 Act, the authorities have the power to release the property seized under Section 52 of the Act upon furnishing of proper bond for the production of the property so released. Despite the petitioner having written to the respondents for availing of such provision, no response thereto was given by the authorities.
5. It is submitted that the options before the authorities, if the vehicle is not released on bond, is either to release it or to confiscate the same within the contemplation of Section 55 of the 1927 Act. Section 55 provides that all timber or forest produce which is not the property of the government and in respect of which a forest-offence has been committed, and all tools, boats, vehicle, etc. used in committing any forest offence shall be liable to confiscation. Such confiscation, in terms of Section 55(2) of the 1927 Act, may be in addition to any other punishment prescribed for the offence.
6. Section 59A (as amended in West Bengal) speaks about confiscation by forest officer of

forest produce in the case of forest offence believed to have been committed.

7. Section 59B provides that no order of confiscation any property, tools, vehicles etc, under Section 59A shall be made except after giving notice in writing to the owner or the person from whom the property, vehicle etc has been seized for showing cause as to why the same should not be confiscated and considering his objections.
8. Subsequent to the filing of the writ petition, it is contended that a notice was given to the petitioner pertaining to the seizure and not a notice under Section 59B of the 1927 Act.
9. The petitioner attended the hearing but till date no outcome of the same has been intimated to the petitioner.
10. It is thus argued that the entire process of seizure is vitiated and the vehicle should be released in favour of the petitioner.
11. Learned counsel appearing for the State argues that since a notice has already been given to the petitioner and the petitioner has been heard, the matter ought to await the outcome of such hearing.

12. It is submitted that despite its best efforts, the authorities in West Bengal could not ascertain the whereabouts of the owner of the vehicle, that is, the petitioner, from the concerned Regional Transport Officer (RTO).

13. Upon hearing learned counsel for the parties, it transpires that the Rules framed under the 1927 Act in West Bengal, that is, the West Bengal Forest-Produce Transit Rules, 1959 (Rules of 1959) clearly stipulates in Rule 7(3) that any timber or other forest-produce not covered by a transit pass referred to in sub-ruled (2) and (3) of Rule 4 together with boats, carts, vehicles or cattle suspected to be carrying the same shall be liable to seizure and dealt with further under the provisions contained in Chapter IX of the 1927 Act.

14. Chapter IX of the Act starts with Section 52, which speaks about seizure of property liable to confiscation.

15. Under Rule 8 of the Rules of 1959 any forest officer who has seized any forest produce under Rule 7 shall immediately issue a written notice to the owner.

16. The said notice has to call upon the owner to produce proof of the origin of the forest

produce within thirty days from the date of issue of such written notice, a copy of which shall be posted on a notice board at the nearest forest office.

17. Some reasonable meaning has to be attributed to the expression “immediately” preceding the issuance of written notice in Rule 8(1)(a). Even after several months from the seizure, such notice was not given in appropriate format to the petitioner. Only after filing of the writ petition did the respondent authorities wake from slumber and issue a notice pursuant to “the seizure” without referring to the exact provision under which the same was issued.

18. Thus, the basic preconditions of a seizure process have been flouted by the respondent authorities.

19. Till date, no notice under Section 59B of the 1927 Act before passing a confiscation order has been issued to the petitioner.

20. It may be taken note of that the vehicle was seized as long back as on January 8, 2023, that is, about eight months before.

21. Hence, in view of the utter inaction on the part of the authorities, the entire process of seizure is vitiated.

22. Thus, the vehicle cannot be retained any further by the respondent authorities and should be returned to the petitioner unconditionally.

23. Accordingly, WPA No. 13826 of 2023 is allowed, thereby directing the respondent authorities to release the vehicle to the petitioner within a week from date.

24. Upon the petitioner approaching for such release before the appropriate authorities, the authorities shall release the said vehicle in terms of this order by acting upon the server copy of this order, without insisting upon prior production of certified copy thereof.

25. It is made clear that nothing in this order shall prejudice the rights of the respondent authorities to draw up appropriate proceeding under the relevant law against the petition on the allegation as made under the 1927 Act.

26. It is also made clear that this writ petition and the order passed therein pertain to the unlawful seizure of the petitioner's vehicle.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)