

D/L. 52.
November 20, 2023.
MNS.

WPA No. 25528 of 2023

Nimai Dey
Vs.
The State of West Bengal and others

Mr. Niladri Shekar Ghosh,
Ms. Sreetama Biswas,
Mr. Sourav Mondal,
Mr. Arya Bhattacharyya,
Ms. Sreyashee Basu

... for the petitioner.

1. Learned counsel for the petitioner contends, in his usual fairness, that although the limitation for preferring a challenge against the impugned order dated March 17, 2023 has elapsed, an opportunity may be given to the petitioner to prefer a challenge before the appropriate appellate authority.
2. It is submitted that Section 59A(3) of the Indian Forest Act, 1927 as amended in West Bengal, uses the word “may” in respect of confiscation of the offending vehicle. It is submitted that the gravity of the offence is to be looked into where there is a discretion conferred on the concerned Officer.
3. In the present case, due to the illness of the wife of the raiyat, he had sold some timber,

which was being carried on the vehicle of the petitioner. Hence, keeping in view that the offence was light in nature, the discretion ought to have been exercised in favour of the petitioner.

4. It is further argued that in the Forest Beat Officer's report annexed at page 28 of the writ petition, there is reflection of the fact that a raiyat had sold the trees-in-question which were standing on his land, to raise the expenses for the treatment of his ailing wife. Hence, a sympathetic approach ought to be taken.
5. Despite service, none appears for the respondents.
6. Insofar as the limitation is concerned for preferring a challenge, the same has already expired and Article 226 of the Constitution of India cannot be used as a means to rectify such error since there is no scope of condonation under the relevant statute.
7. Inasmuch as the contention of the petitioner is concerned, even if a raiyat of a land had sold the timber-in-question on the ground of illness of his wife, for her treatment, the petitioner, who is the owner of the offending vehicle

which was carrying the said timber, cannot take advantage or sympathy for such situation, since the petitioner would have been a beneficiary, unless his offending vehicle was confiscated, of such unfortunate predicament of the raiyat-in-question.

8. Inasmuch as Section 59A(3) of the 1927 Act is concerned, the expression “may” does not give a charter on the offending vehicle to claim any sympathetic view since the discretion has been used rightly by the concerned Officer in confiscating the vehicle.
9. That apart, it is seen from the impugned order dated March 17, 2023 that an opportunity of hearing was given to the petitioner and the petitioner, as recorded in paragraph 3 of the impugned order, had tendered apology with a prayer to release the vehicle claiming that he did not know that a transit pass is required for transportation of timber.
10. It was also recorded that he did not submit any documents related to the ownership of the vehicle. No other aspect was argued as such.
11. Section 69 of the 1927 Act raises a presumption that forest produce belongs to

the government, which has not been rebutted in the present case.

12. Thus, in any event, there is no scope of interference with the impugned order.

13. Accordingly, WPA No. 25528 of 2023 is dismissed.

14. There will be no order as to costs.

15. 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.)