

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 8852 of 2020

Sri Satyendra Singh

Vs.

The State of West Bengal and others

With

WPA No. 8856 of 2020

Premananda Saha

Vs.

The State of West Bengal and others

For the petitioner in both the cases	:	Mr. Chinmoy Pal, Mr. Kamal Krishna Guha
For the respondent-authorities	:	Mr. Subir Kumar Saha, Mr. Bikramaditya Ghosh
Hearing concluded on	:	12.01.2021
Judgment on	:	28.01.2021

Sabyasachi Bhattacharyya, J:-

1. The two writ petitions are taken up together for hearing, since both arise from the same cause of action. Premananda Saha, the petitioner in WPA No. 8856 of 2020, runs a timber business and was transporting his products on a vehicle owned by Satyendra Singh, the petitioner in WPA No. 8852 of 2020. The authorities seized the products, along with the vehicle, on the allegation that the vehicle was carrying forest products

(logs) without appropriate permit. Notice was issued to the petitioners and, upon hearing them, the Authorized Officer, Darjeeling District and Divisional Forest Officer (respondent no.3) passed an order on March 2, 2020 for confiscation of the vehicle along with the timber. Upon an appeal being preferred before the appellate authority (respondent no.2), the said authority, vide Order dated August 12, 2020 affirmed the order of respondent no.3. Challenging the said orders, the present writ petitions have been preferred by the owners of the vehicle and the timber respectively.

2. Learned counsel for the petitioners argues that the products, along with the vehicle, were seized in contravention of Rule 8 of the West Bengal Forest-Produce Transit Rules, 1959 (hereinafter referred to as “the 1959 Rules”) and Section 100 of the Code of Criminal Procedure, 1973. No copy of the seizure list was handed over to the owner or driver in accordance with law, it is alleged. Moreover, signatures of independent witnesses were not taken at the time of seizure. Only the driver’s signature was taken.
3. Placing reliance on *2005 (4) CHN 565 [Minati Paul vs. State of West Bengal]*, learned counsel submits that the court has power to release the offending vehicle by imposition of fine in lieu of confiscation of the vehicle. The expression “may” occurring under Section 59D(2) of the Indian Forest Act, 1927 (hereinafter referred to as “the 1927 Act”), it was

held in the report, is to be interpreted as discretionary and not mandatory and for the purpose of securing justice, the vehicle may be released by imposition of fine in lieu of confiscation thereof in suitable cases.

4. Learned counsel next places reliance on *State and others vs. Santosh Saha*, reported at *AIR 2000 Cal 104*, wherein a Division Bench of this court held, inter alia that, as laid down in *Wazir Chand vs. State of Himachal Pradesh [AIR 1954 SC 415]*, illegal seizure of goods would amount to infringement of fundamental rights and the High Court under Article 226 of the Constitution of India would be entitled to direct return of such goods.
5. Learned counsel next refers to Section 16 of the West Bengal Trees (Protection and Conservation in Non-Forest Areas) Act, 2006 (hereinafter referred to as “the 2006 Act”), for the proposition that an offence, committed and punishable under the said Act, may be compounded by the concerned Officer.
6. The petitioners further submit that, in the present case, non-forest teak produce was seized. As such, it is argued that the 2006 Act, and not the 1927 Act, is applicable.
7. It is contended on behalf of the petitioners that the seizure took place on May 1, 2019. As such, the West Bengal Forest-Produce Transit Rules,

2019, published vide Notification No. 875/FR/O/FP/6M-11/2014 dated May 31, 2019, is not applicable to the instant case.

8. It is argued that the impugned appellate order records that transit pass was issued in respect of non-forest teak produce to the petitioners, thus, rendering the seizure illegal.
9. Learned counsel appearing for the respondent-authorities in both the matters argues that a notice was duly given to the owner, as contemplated under Section 59B of the 1927 Act (as amended in West Bengal) before confiscation. Such notice contained the requisite particulars. Moreover, the seizure list was sent to the appropriate authority thereafter in compliance with law. As such, Section 52 of the 1927 Act was also followed.
10. Learned counsel contends that, out of the total logs being carried on the vehicle, 144 teak logs were without any hammer impression. As such, under Section 69 of the 1927 Act, the produce was rightly presumed to be the property of the Government until the contrary was proved.
11. The seizure of the vehicle, it is argued, was in compliance with Rules 7(3) and 8(1)(b) of the 1959 Rules. The seizure list was drawn up and forwarded to the concerned Judicial Magistrate vide POR No. 8/BD of 19/20 dated May 1, 2019 in terms of Section 52 of the 1927 Act.
12. The seizure list, in compliance with Rule (1)(b) of the 1959 Rules, was drawn up in presence of witnesses and the person in charge of the goods,

that is, the driver, signed the same. Details and particulars of all 144 teak logs were annexed with the seizure list.

- 13.** The owners of the vehicle and seized products appeared before the Authorized Officer and submitted written submissions. Thereafter, they were given adequate opportunity to represent themselves and to present their case in a personal hearing. Upon consideration of such submissions, the Authorized Officer passed a reasoned order prior to confiscation. The appellate authority confirmed such order with elaborate reasons as well. As such, it is argued that minor technical issues raised by the petitioners, without demonstrating any prejudice being caused to them, ought not to be taken note of.
- 14.** In the present case, admittedly, notice was issued to the owners under Section 59B of the 1927 Act. They were heard and, only thereafter, the order of confiscation was passed. The orders passed by the Authorized Officer and appellate authority are both reasoned.
- 15.** The specific allegation against the petitioners is that forest-produce was being carried in the offending vehicle without a valid permit. Therefore, the seizure was in terms of the 1927 Act. Sufficient materials have been furnished by the respondents to show that a seizure list was duly drawn up and forwarded to the Magistrate, as contemplated under Section 52 of the said Act.

- 16.** Section 100 of the Code of Criminal Procedure has no application in the present case. The instant seizure was made under the provisions of the 1927 Act, read with the 1959 Rules. Section 100 of the Code provides for search or inspection under the relevant chapter, that is, Chapter-VII of the Code, and pertains to closed places. Not only was the present seizure made in an open area, the same was conducted under a special statute, being the 1927 Act, and not Chapter-VII of the Code, which relates to general procedure of production and search in respect of persons to whom summons or an order under Section 91 or a requisition under Section 92(1) of the Code was addressed.
- 17.** It is evident from the seizure list that the same carries the signature of the driver and contains detailed particulars of the seized products. Rule 7(3) of the 1959 Rules provides that any timber or other forest-produce not covered by a transit pass referred to in Rule 4(2) and (3), together with vehicles suspected to be carrying the same, shall be liable to seizure.
- 18.** Rule 8(1) of the 1959 Rules provides that a Forest Officer who has seized any forest-produce under Rule 7 shall immediately issue a written notice to the owner of the forest-produce, or if the owner is unknown, to the person in charge or possession of such forest-produce at the time of seizure, calling upon him to produce proof of the origin of the forest-produce and his title thereto within 30 days from the date of issue of

such written notice and submit a seizure report in the prescribed form without delay to the Magistrate having jurisdiction to try the offence on account of which the seizure was made.

- 19.** The seized forest-produce shall then be released or confiscated under the provisions contained in Chapter-IX of the 1927 Act. In the present case, such notice was admittedly given to the owner. No fault on the part of the authorities can be found on such score.
- 20.** Section 59B of the 1927 Act also contemplates notice before confiscation, which was complied with as well in the present case, as evident from the notice annexed to the writ petitions.
- 21.** Section 16 of the 2006 Act has no direct application in the present case, since the alleged offence did not pertain to any offence committed or punishable under the said Act. In any event, compounding an offence is at the discretion of the concerned Officer and does not vitiate the action of the Officer for non-exercise of such discretion.
- 22.** As far as *Minati Paul (supra)* is concerned, a co-ordinate Bench of this court held that the court has power to release the offending vehicle by imposition of fine “in suitable cases”. In the said case, certain distinguishing features were recorded, including the value of the seized products and the fact that the offence was committed by the petitioner therein for the first time. As such, no general proposition was laid down that the discretion has to be exercised in a blanket fashion in each and

every case. In the present instance, no such distinguishing feature has been pleaded or proved. Moreover, the exercise of discretion by the authorities was justified in law and, as such, does not deserve intervention by the court.

23. The Division Bench judgment of *State vs. Santosh Saha (supra)* merely laid down that illegal seizure of goods would amount to infringement of fundamental rights and the High Court would be entitled to direct return of such goods under Article 226 of the Constitution. No illegality in seizure, however, has been made out in the present case. Thus, there cannot arise any occasion to direct return of the confiscated goods.
24. In the circumstances discussed above, there is no scope of interference with the impugned orders.
25. Accordingly, WPA No. 8852 of 2020 and WPA No. 8856 of 2020 are dismissed on contest, without any order as to costs.
26. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)