

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 24243 of 2019

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Pawan Kumar Yadav aged about 49 years, Gender-Male, Son of Ram Jatan Yadav, Resident of Village- Ahopur, Gangapur, P.S.Jansa, District- Varanasi, U.P.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna.
2. The Conservator of Forest, Gaya Circle, Gaya.
3. The Divisional Forest Officer, Gaya Forest Division, Gaya.
4. The District Magistrate-cum- Appellate Authority, Gaya.
5. The Forester, Bhalua (Barachatti), District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Advocate
For the State : Mr. Dhurjati Kumar Prasad, GP 14

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 05-12-2019

Heard learned counsel for the petitioner and learned GP
14 for the State.

2. The petitioner has moved the Court for the following
reliefs:

“i) For issuance of a writ in the nature of certiorari for quashing the seizure list dated 7.10.2017 (Annexure-P-4) prepared by the Forester, Bhalua (Barachatti), District- Gaya whereby the Truck bearing Registration No. UP65FT-5561 loaded with “Sand” has been seized in violation of Section 33 (i) (a) (b), 33 (c) and 63 of the Indian Forest Act (Bihar Amendment Act, 1989) Act, 1927 as the “Sand” is neither comes within Schedule of the Bihar Forest Produce (Regulation of Trade) Act, 1984 nor the Forester is



not empowered to make Entry, Inspection, Search and Seizure under Section 52-D of the Indian Forest Act, 1927.

ii) For issuance of a writ in the nature of certiorari for quashing of the order bearing Memo No. 3819 dated 22.10.2019 (Annexure-P-12) passed by the Principal Secretary-cum-Revisional Authority, Environment & Forest Department, Government of Bihar, Patna in Revision Case No. 26 of 2018 whereby the order dated 19.02.2018 (Annexure-P-9) passed by the Authorised Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya in Confiscation Case No. 34 of 2017 and the Order dated 10.7.18 (Annexure-P-10) passed by the District Magistrate, Gaya in Forest Appeal Case No. 4 of 2018 has been confirmed without taken into legal issues involved in the present case.

iii) For issuance of a writ in the nature of Mandamus directing the respondent no. 3 to release the Truck bearing Registration No. UP65FT-5561 in favour of the petitioner in the facts and circumstances of the case.

iv) For issuance of such other writ(s), order(s), direction(s) as your lordships may deem fit and proper.”

3. The truck of the petitioner bearing registration No. UP65FT-5561 was seized with sand loaded on it at 2:45 AM on 07.10.2017 in the forest area in the district of Gaya. The same was the subject matter of confiscation proceeding and ultimately both the vehicle and the sand have been confiscated. Challenge to the same before the Collector failed and revision filed by the petitioner before the Principal Secretary of the Forest Department, Government of Bihar, also did not succeed. Thus, the present writ.



4. Learned counsel for the petitioner submitted that he, being the owner of the truck, had approached for releasing the truck as it could not be the basis of any confiscation proceeding, both on legal and factual grounds. It was submitted that Section 52-D of the Indian Forest Act, 1927 (as amended by Bihar), (hereinafter referred to as the 'Act') does not authorize search and seizure by a person who is not a Forest Officer and in the present case, such seizure being made by the Forester, the very basis of such proceeding stands vitiated in law. It was submitted that even otherwise, Section 63(c) of the Act would not be attracted as sand is not an item covered under the Act. It was submitted that sand being a minor mineral is covered under the Bihar Minor Mineral Rules, 2017. It was submitted that in the present case, the Mines and Minerals Department, Government of Bihar has also lodged an FIR which clearly indicates that at best the seizure of the sand could be under the relevant statutory provisions relating to minor minerals under which sand is covered. It was submitted that in the FIR filed, the petitioner being the owner of the truck in question was not named as an accused. It was submitted that in the confiscation proceeding, he had brought it to the notice of the authorities that the sand which was loaded on the truck belonged to Om Enterprises, located in Varanasi and was picked up from



M/s Ganrajya Traders, Kalimati, Chirkunda, Dhanbad in the State of Jharkhand. It was submitted that even otherwise, law requires that the owner of any article, which is the subject matter of confiscation proceeding, has to be noticed and heard before order is passed, but in the present case, no such notice was ever issued to Om Enterprises, which is the owner of the sand which was found loaded on the truck of the petitioner. Learned counsel drew the attention of the Court to the invoice issued by M/s Ganrajya Traders which indicates that on 07.10.2017, 600 CFT of river sand was sold to Om Enterprises, Varanasi. Learned counsel submitted that normally the route taken from Dhanbad to Varanasi is the Grand Trunk Road but due to some blockage there, a detour was taken and thus the truck was caught by the authorities. It was submitted that the petitioner had moved the Court initially in CWJC No. 15440 of 2017, which was disposed off along with analogous cases on 17.11.2017, by which a direction was given to the Forest Officer-cum-Divisional Forest Officer to consider and dispose off the confiscation case, in accordance with law within a period of three months and if the same was not done, for reasons not attributable to the petitioner, then the application for provisional release of the vehicle was to be considered. Learned counsel submitted that pursuant to this, the order has been passed



by the original authority more by way of a hurried response rather than doing justice in the matter. It was further submitted that in terms of Section 55 of the Act relating to articles which are liable to confiscation, the same should be the property of the Government and sand is not covered by it.

5. Learned counsel for the State submitted that the action of the authorities is fully in accordance with law. He submitted that the contention that the seizure itself was effected by an unauthorized person is erroneous as a Forester is also a Forest Officer under the Act, as has been held by a Division Bench of this Court in **Jamuna Prasad Singh v. State of Bihar** reported as **1994(1) PLJR 842**, the relevant being at paragraph no. 9. It was submitted that the said decision has been approvingly referred to by a Full Bench of this Court in **Bijay Krishna Sahay v. State of Bihar** reported as **1998(3) PLJR 429**. Learned counsel submitted that the Division Bench in **Bijay Krishna Sahay** (supra) at paragraph no. 13, has held that neither the criminal case will fall, nor the confiscation proceeding will become not maintainable, even if the search and seizure are ultimately found to be illegal, provided commission of forest offence has been proved on the basis of relevant evidence/material. Learned counsel submitted that in the present case, there is ample evidence to indicate that the



seized sand was illegally being lifted for the purpose of transportation from forest area. Learned counsel submitted that Section 52 of the Act provides that any Forest Officer or Police Officer can effect seizure if there is reason to believe that a forest offence has been committed in respect of any forest produce. In this connection, learned counsel drew the attention of the Court to Section 2(4) of the Act which defines 'forest produce', especially its sub Clause (b)(iv) which clearly stipulates that mineral would include all products of mines or quarries. Thus, it was submitted that sand also being such a product is covered under the definition of 'forest produce' under the Act. Learned counsel submitted that in such view of the matter, any officer being authorized to seize an article, the Forester in the present case, having done the same, is in accordance with the statutory provisions. It was submitted that the truck was seized from a place where it was found that trees had been cut to make way for illegal mining of sand and, thus, Section 63(c) of the Act, which relates to altering boundary marks of any forest, is fully attracted, as in the present case, the specific allegation is that trees were cut to make passage for vehicles for illegal sand lifting. He further submitted that Section 33(2) of the Act is also clearly attracted as it relates to theft of 'forest produce'



i.e., sand and also of the trees which have been removed for making way for plying of vehicles.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. As has rightly been contended by learned counsel for the State, the objection of the seizure being made by the Forester is devoid of merit in view of the provision of Section 52 of the Act, as has been held by the Division Bench in **Jamuna Prasad Singh** (supra). Coming to the contention of learned counsel for the petitioner that the sand belongs to Om Enterprises, such submission is noticed only for rejecting the same. From the copy of the tax invoice, which has been annexed to the writ petition of M/s Ganrajya Traders in favour of Om Enterprises dated 07.10.2017, the Court would only observe that the same *ex-facie* appears to be a later created document, which has no bearing on the present case for the reason that seizure of the sand was effected in the district of Gaya in the State of Bihar at 2:45 AM on 07.10.2017, and, thus, a receipt showing sale of sand on 07.10.2017 at Dhanbad cannot be linked or connected with the present transaction as in less than three hours, the truck could not have reached the place where it has been held and further, the sale could not have been made at midnight



and in any case could not have reached Gaya at the time when it was caught. Thus, issuance of such tax invoice itself may require strong action. As a consequence, on this ground, the objection of no notice being served to the owner of the sand also does not merit consideration as the ownership has not been proved in favour of Om Enterprises, Varanasi and if the only document relied upon to indicate ownership of the sand is the tax invoice, copy of which has been brought on record then, the Court has no hesitation to hold that such document absolutely has no bearing with regard to the ownership of the sand which has been seized on the truck of the petitioner at 2:45 AM on 07.10.2017 and is clearly collusive and fraudulent. Moreover, such objection could be raised only by Om Enterprises and not the petitioner. As far as the contention of learned counsel for the petitioner that sand is not covered under the Forest Act, stands negated by the definition of 'forest produce' in Section 2 (4) (b) (iv) of the Act, which clearly and necessarily would make sand a 'forest produce' amenable to the provisions of the Act. Once the Court has found that sand would be covered under such definition, automatically sections 33 (2), 52 and 63 (c) of the Act, would be attracted.

7. Further, the Court would just add to what has been submitted by learned counsel for the State regarding the



circumstances and the place from which the truck of the petitioner has been caught. It cannot be a mere coincidence that the truck has been caught with sand loaded from where two JCBs meant for excavating sand have also been seized and that too, from a forest area which has been found to have been cleared after cutting trees making passage for vehicles for lifting of sand. Thus, in the considered opinion of the Court, such facts establish the charge that the sand was lifted from forest area and the site where sand was stocked for loading, after clearing the area, and accordingly, the action taken and the orders passed are in consonance with the requirement of law.

8. The Court would also not loose sight of the fact that environmental laws, besides being substantive law, are required to be strictly implemented in today's world as non confirming to these laws is leading to drastic and grave evil consequences on nature, which are irreversible and no slackness can be afforded or permitted on this front. However, this would not mean that the provisions of the law or the statutory requirements are to be waived. In the present case, the Court does not find any violation of any statutory or legal provisions and the orders of the authorities are well considered requiring no interference.



9. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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