

(2019) 05 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20625 Of 2018

Madan Gopal Gupta

APPELLANT

Vs

State Of Bihar Through Forest Secretary And Ors

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 2 PLJR 1199

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Md. Shahnawaz Ali, Chitranjan Sinha, Shailendra Kumar

Final Decision : Disposed Of

Judgement

1. This writ application has been filed for issuance of appropriate writ in the nature of mandamus directing the Respondent authority i.e. Divisional Forest Conservation Officer cum Area Director and Divisional Forest Officer, Bettiah, West Champaran, to provisionally release the vehicle of the Petitioner bearing registration No. UP 53 T 0975 (Old Truck) 2002 in compliance of the order passed in CWJC No.19542 of 2013 till disposal of CRM Case No.10 of 2014-15.

2. It has been submitted on behalf of the Petitioner that he is registered owner of the Truck bearing registration No.UP 53T 0975. Vehicle of the Petitioner was seized by Kotraha Forest Officer on 17.04.2006 and reported to the Divisional Forest Officer to institute a case against the vehicle. The case was registered under the Forest Act in the Court of the ACJM, West Champaran, Bettiah. The Forest Officer, Kotraha (Respondent No.7) filed First Information Report and prepared seizure list of the goods dated 17.04.2006 and the vehicle was detained in the campus of Forest Department, Kotraha. The order for confiscation of the vehicle as well as the goods was passed on 01.05.2007. The Petitioner contested the matter and submitted the Challan for transporting the aforesaid article dated 17.04.2006, which showed that the sand loaded on the truck was taken from raiyati land. The Respondent did not consider the plea of the Petitioner and

vehicle was confiscated.

3. The Petitioner filed appeal before the Collector, West Champaran, vide CRM Case No.09 of 2007-08. The Collector, West Champaran, passed order dated 07.11.2008 holding that the sand loaded on the truck was loaded from a raiyati land of one Vindhya on the basis of valid Challan. Respondent No.6 was directed to release the truck to the Petitioner on furnishing personal bond of Rs. One lac. Xerox copy of the order dated 07.11.2018 passed by the Collector, West Champaran, in CRM Case No.09 of 2007-08 is enclosed as Annexure-2.

4. Thereafter, the Department filed revision before the Respondent No.1 vide Revision Case No.18 of 2008. The revision was allowed and the order of the Collector, West Champaran, was set aside. Xerox copy of the order passed in revision is enclosed as Annexure-3.

5. The Petitioner then filed CWJC No.16139 of 2010 for release of the Truck and for setting aside the order passed by the revisional authority. The Hon'ble Court by order dated 04.09.2012 remanded the matter before the Divisional Forest Officer and directed the Petitioner to place his case before the DFO, who would make verification of the genuineness of the Challan, and would pass a fresh order in the matter. Xerox copy of the order dated 04.09.2012 passed in CWJC No.16139 of 2010 is enclosed as Annexure-4.

6. The booklet of the Challan was issued on 23.03.2006 from the office of Mineral Development Officer, West Champaran, Bettiah, and accordingly, receipt of the Challan was issued on 17.04.2006 by Mr. Madhukar Srivastava, authorized representative of the Department, and he issued Challan for transporting the sand which is in accordance with law. The sand was loaded outside the forest area. Therefore, the Collector directed to release the vehicle.

7. The Divisional Forest Officer re-heard the matter after passing of the order by this Court in CWJC No.16139 of 2010. The Respondent No.3 did not follow either the direction of the Hon'ble Court or the report of the Mineral Development Officer, Bettiah, who reported that Challan was issued validly from the office of Mineral Development Officer, Bettiah. The Respondent No.3 did not consider the claim of the Petitioner and did not release the Truck and directed to re-confiscate the Truck. He also directed to initiate confiscation proceeding again in this regard. Xerox copy of the order passed by the DFO is enclosed as Annexure-5.

8. The Petitioner, again, moved the Hon'ble Court in CWJC No.19542 of 2013. The Hon'ble Court by order dated 03.07.2014 passed in CWJC No.19542 of 2013 has held that appeal is maintainable against the order of the Divisional Forest Conservation Officer cum Area Director (Respondent No.3) and also held that any prayer made by the Petitioner for provisional release of the Truck would be considered and disposed off by the appellate authority in accordance with law expeditiously and preferably within four weeks of making such request by the Petitioner.

9. It is submitted that Petitioner filed an appeal before the Collector, West Champaran, Bettiah, vide CRM No.10 of 2014- 15 on 08.08.2014 which remained pending till date. The Petitioner filed an application for provisional release of the Truck, which was heard on 27.11.2014, but the said Truck was not released provisionally till date. The Truck of the Petitioner is getting damaged day by day and its value is also deteriorating every day. Prayer has been made to direct the appellate authority i.e. Respondent No.2 (Collector, West Champaran) to release the vehicle of the Petitioner provisionally during the pendency of the appeal.

10. Xerox copy of the order-sheet of appellate authority has been enclosed as Annexure-7, which shows that appeal was being adjourned on various dates.

11. This Court after going through the order of the appellate authority (Annexure-7) finds that the attitude of the appellate authority was not proper in not taking the order of this Court seriously. The Collector cum District Magistrate, West Champaran, Bettiah, was only adjourning the case without taking the direction of the Court passed in CWJC No.19542 of 2013 seriously.

12. The District Magistrate, Bettiah, West Champaran, was directed to remain present in Court along with show cause. Show cause was filed by the Collector cum District Magistrate, West Champaran, Bettiah, on 25.02.2019 stating therein that matter remained pending because report of the DTO with regard to valuation of the vehicle was not received in his office. The District Magistrate has further submitted that he has joined as District Magistrate on 3rd August, 2017. As such from show cause, it is apparent that he was posted there for more than two years. It is also mentioned in Show Cause that appeal was dismissed for default by order dated 04.02.2017. The same was restored on 03.07.2017. It further appears from show cause filed by the District Magistrate that after passing of order by this Court on 14.02.2019, for his personal appearance, he has passed final order in the appeal on 22.02.2019, which has been enclosed as Annexure- J to the Show Cause. He has remanded the case to Authorized Officer cum Divisional Forest Officer (Respondent No.4) directing him to pass order within 30 days after taking into consideration the report of Mineral Development Officer with regard to genuineness of the Challan. He has further directed that during the aforesaid period in compliance of the order dated 03.07.2014 passed in CWJC No.19542 of 2013, he will release the vehicle provisionally after taking personal bond as well as on other conditions as mentioned in the order dated 22.02.2019.

13. The order in this case (Writ Petition) was kept reserved on 12.03.2019.

14. It was brought to the notice of this Court by counsel for the Petitioner that during the period order has been reserved by this Court, further order has been passed by Respondent No.4 after remand on 16.03.2019, by which he has again ordered for confiscation of the vehicle on the ground that District Mining Officer has not given clear report on several points as mentioned in the order dated 16.03.2019.

15. Counsel for the Petitioner has submitted that Respondent No.4 has mentioned in the order dated 16.03.2019 that Petitioner was holding Challan, which was found to be genuine after verification by the Mines Department.

16. Since separate cause of action has arisen after passing of the order dated 16.03.2019 by Respondent No.4, this Court does not feel inclined to pass any observation on the merit of the order dated 16.03.2019 passed by the Respondent No.4.

17. So far merit of the order dated 22.02.2019 passed by the District Magistrate, West Champaran, in the instant case during pendency of this writ application is concerned, this Court finds that earlier by order dated 03.07.2014 passed in CWJC No.19542 of 2013, the appellate authority (Respondent No.2) was directed to hear the appeal and pass order for provisional release of the Truck, in question, during pendency of appeal expeditiously preferably within a period of four weeks of making such request by the Petitioner. It appears that no serious attention was given to the order of this Court by the appellate authority. The matter was adjourned on several dates without any valid reason. It is mentioned in the show cause that matter remained pending for want of report of the DTO with regard to valuation of the vehicle.

18. This Court is surprised to hear such statement made in the show cause filed on behalf of the District Magistrate, which shows his negligence and no control over his office. It appears that after passing order by this Court for his personal appearance on 14.02.2019, he has passed order on 22.02.2019 by which he has remanded the matter to Respondent No.4 to pass appropriate order within one month and during that period he has ordered for provisional release of the vehicle. The Respondent No.4 has again ordered for confiscation of the vehicle by order dated 16.03.2019.

19. From the writ petition, it appears that vehicle of the Petitioner was confiscated in 2006. He has been making repeated prayer for release of the vehicle on the ground that he was holding valid Challan and he was not carrying any forest produce. The Collector, West Champaran, vide order dated 07.11.2008 passed in CRM Case No.09 of 2007-08 (Annexure-2) earlier ordered for release of the vehicle on the ground that Petitioner was holding valid Challan. The Collector has mentioned in the aforesaid order (Annexure-2) that after seizure of Truck, a report was called for which was submitted showing that the sand, in question, was loaded from raiyati lease hold area. The Collector had held that paper showing loading of sand from leasehold area had not been considered by learned lower Court and illegally held that the sand, in question, was forest produce and confiscated the Truck wrongly on the basis of prosecution report.

20. The Department instead of releasing the Truck of Petitioner has challenged the aforesaid order by filing revision application. The revisional authority vide order as contained in Annexure-3 set aside the order of the Collector as contained in Annexure-2 and has affirmed the order of confiscation as contained

in Annexure-1 passed by the Respondent No.4.

21. The Petitioner again filed CWJC No.16139 of 2010 and by order dated 04.09.2012 passed in the aforesaid writ, the Petitioner was directed to appear before the Divisional Forest Officer and place his case that he had valid Challan for lifting the sand from the site. The Divisional Forest Officer would make verification of the genuineness of the Challan and would pass a fresh order in the matter.

22. It appears that after passing of the order by the Hon'ble Court the Authorized Officer cum Divisional Forest Officer cum Deputy Director (Respondent No.4) reheard the matter and ordered for re-confiscation of the vehicle by order dated 02.04.2013. He has mentioned in the aforesaid order that Petitioner has deposited Challan in the office on 29.10.2012. The Challan was got verified. The Mineral Development Officer, Bettiah, vide his report dated 22.11.2012 informed about genuineness of the Challan issued from Mining Office, Bettiah. It is further stated in the order that since report was not clear with regard to time and sand as well as miscutt, the same was again sent for verification by Office Order No.2095 dated 30.11.2012. The Report was again received from the District Mining Officer, Bettiah, vide Letter No.275 dated 12.12.2012 in which no clear report was mentioned with regard to main point.

23. Thereafter, again, report was called for by Respondent No.4 vide Office Order dated 11.01.2013 with regard to 4th point as mentioned in the order and after relying on the aforesaid report dated 10.02.2013, Respondent No.4 has ordered for re-confiscation of the vehicle.

24. The vehicle was confiscated in the year 2006 and Challan is also dated 17.04.2006. Aforesaid Challan was verified by the Officer of Mining Department. They have confirmed by submitting report that Challan issued from the Department is genuine. Earlier, the Collector by order dated 07.11.2008 passed in CRM Case No.09 of 2007-08 (Annexure-2) ordered to release the vehicle after relying on the report of the Mining Department that Challan is valid, but still vehicle has not been released. The Petitioner moved the Hon'ble Court. The Hon'ble Court by order dated 03.07.2014 passed in CWJC No.19542 of 2013 directed the Petitioner to file appeal before the appellate authority. The matter remained pending for more than three years before appellate authority.

25. The State authorities are expected to pass order to redress the grievance of the person(s), who has/have approached them. It is not expected from the State authorities to cause harassment to individual citizen by passing mechanical order again and again even after the order of the Hon'ble Court.

26. In this case, from various orders passed by the State authorities, it appears that in spite of order passed by this Hon'ble Court, mechanical orders are being passed by the State authorities causing unnecessary harassment to the individual citizen (Petitioner). In the instant case, as a result of mechanical orders, vehicle of the Petitioner has remained in the campus of the Forest

Department since 2006.

27. During pendency of this application, fresh order has been passed by the Respondent No.4 on 16.03.2019 directing to re-confiscate the vehicle of Petitioner. This Court does not desire to pass any observation with regard to order dated 16.03.2019 passed by the Divisional Forest Officer, (Respondent No.4), because the Petitioner has separate cause of action against that order as per law. But, at this stage, this Court seriously deprecates such attitude of Respondent Nos.2 and 4, in passing the orders in mechanical manner in spite of direction of this Court, causing harassment to individual citizen (Petitioner).

28. In the instant case, the Collector, West Champaran, Bettiah, did not pass the order on the appeal of the Petitioner in compliance of the order dated 03.07.2014 passed in CWJC No.19542 of 2013 within the period as directed by this Court. The Petitioner was forced to file instant writ application for direction to Respondent No.2 to pass order. Thereafter, Respondent No.2 was directed to appear personally in Court and explain the cause of delay. Then, he has passed the order dated 22.02.2019 by which he has remanded the case to Respondent No.4. The Respondent No.4, on remand, has again ordered for re-confiscation of the Vehicle by order dated 16.03.2019.

29. It is, now, well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution of India and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law.

30. The Hon'ble Supreme Court in the case of Dr. (Mrs.) Meera Massey Vs. Dr. S. R. Mehrotra reported in AIR 1998 SC 1153 has observed as under:

"If the laws and principles are eroded by such institutions it not only pollutes its functioning deteriorating its standard but also exhibits wrong channel adopted..... If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only uplift many but bring back even limping society to its normalcy."

31. An authority has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution.

32. The Hon'ble Supreme Court in the judgment reported in AIR 1990 SC 1402 (Km. Nelima Misra Vs. Harinder Kaur Paintal and Ors.) has held that "an administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice.

As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly".

33. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by Government must be in public interest. The Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated.

34. Therefore, wherever any action of the authority is in violation of the provisions of the Statute or the action is constitutionally illegal, it cannot claim any sanctity in law, and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegal act and it becomes the solemn duty of the Court to deal with the person violating the law with heavy hands.

35. This Court from the conduct of the Respondent Nos.2 and 4 finds that their action is totally suffering from arbitrariness to cause harassment to the Petitioner. The Petitioner is litigating for release of his vehicle since 2006 even after passing of several order by this Court as well as order passed by the Collector dated 07.11.2018 (Annexure-2) directing to release the vehicle.

36. In such circumstances, the District Magistrate cum Collector of district West Champaran (Respondent No.2) is directed to pay a sum of Rs.50,000/- (fifty thousand) to the Petitioner as compensation for prolonged litigation which he has to undergo on account of arbitrariness on the part of the Respondents in passing mechanical orders. The Respondent No.2 will make payment of the aforesaid amount to the Petitioner within a period of two months from the date of receipt/production of a copy of this order.

37. This writ application is, accordingly, disposed off.