
(2008) 06 GAU CK 0073
In the Gauhati High Court

Md. Aziz Ahmed Khan

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Assam Forest Act, 1891 — Section 49, 49(1), 49(2), 49(3), 49(4)
Constitution of India, 1950 — Article 226

Citation : (2009) 3 GLR 598 : (2008) GLT 918 Supp

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The petitioner who is the owner of a vehicle bearing registration No. MZ-01D/4521 by the present petition has challenged the order of confiscation dated 9.10.2007 passed by the Divisional Forest Officer, Karimganj Division, Karimganj (respondent No. 3) in Forest Case No. PK/05 of 2007-08 of Patharkandi Range, basically on the ground violation of the principles of natural justice and prayed for re-hearing" of the said Forest Case by any other competent authority other than the respondent No. 3, in compliance of the provisions of the Assam Forest Regulation, 1891 ("the Regulation").

2. The case of the petitioner in the writ petition is that on 16.6.2007 he received a notice from the Patharkandi Forest Range Office intimating him that the aforesaid truck was seized by the said authority as the same was found loaded with few bundles of fire wood on 14.6.2007, in response to which he submitted his reply on 26.6.2007 intimating the authority that the driver of the truck was carrying the said goods illegally and without his permission and requested the authority to release the truck. As the vehicle in question has not been released, the petitioner filed another application before the DFO, Karimganj on 3.7.2007 praying for release of the said truck under the provisions of Section 49(A) of the Regulation. As no action was taken by the DFO on the said application, the petitioner approached this Court in WP(C) No. 3486/2007, wherein this Court

vide order dated 20.8.2007 directed the DFO to assess the present value of the truck and thereafter on furnishing adequate security for the truck to the satisfaction of the DFO having regard to the value thereof and also on execution of an undertaking to produce the truck as and when required, to release the same in favour of the petitioner. Though by the said order the DFO was directed to assess the value of the truck within a week from the date of receipt of the certified copy of the order, but no action has been taken by the DFO in spite of receipt of the certified copy and only vide communication dated 29.9.2007 the DFO informed the petitioner about assessment of the value of the truck at Rs. 8,25,000 and asked to take interim custody of the same by furnishing an irrevocable bank guarantee of the said amount. Such direction, according to the petitioner, being not reasonable, he filed an application before the DFO on 4.10.2007 intimating that it is not possible on his part to furnish any irrevocable bank guarantee and prayed for releasing the vehicle after accepting the land security offered by his brother which was, however, rejected by the DFO vide letter dated 5.10.2007. The petitioner thereafter approached this Court again in WP(C) No. 5515/2007 and this Court vide order dated 15.10.2007 directed the DFO to release the truck without insisting for bank guarantee and on furnishing other security as well as on execution of bond offered by the petitioner. According to the petitioner, in spite of such direction the vehicle was not released. The further case of the petitioner is that the DFO, in the meantime on, 5.9.2007, issued a notice fixing the aforesaid Forest Case for hearing on 26.9.2007, on which date an application was filed through his brother seeking adjournment for 30 days, on the ground of his suffering from Viral Hepatitis-C, enclosing therewith a medical certificate issued by the attending doctor. Accordingly, the adjournment was granted till 4.10.2007, on which date another prayer for adjournment of the case was made as he could not attend the hearing because of his illness, but the DFO without considering the prayer of the petitioner for adjournment up to 22.10.2007 fixed the case on 9.10.2007 for hearing and on that day the order of confiscation was passed, thereby depriving the petitioner from the right of hearing as contemplated under Sections 49(5) and 49(6) of the Regulation as he has not been given effective hearing and the opportunity to satisfy the authorized officer that the truck was used without his knowledge or connivance or abatement. The further case of the petitioner in the writ petition is that he having not been informed about the materials sought to be relied upon in the confiscation proceeding by the authorized officer, his right to have an effective opportunity of hearing has been violated and consequently the procedure laid down in Section 49(5) of the Regulation has also been violated. The petitioner further contended that since the order of confiscation was passed in violation of the procedure laid down in Section 49 of the Regulation and also in Violation of the principles of natural justice, though there is alternative remedy available to him by way of review as well as statutory appeal u/s 49(B) and 49(C) of the Regulation, respectively, this Court may not insist for exhausting the alternative remedy first, before approaching this Court under Article 226 of the Constitution of India.

3. The case of the respondents as reflected in the affidavit-in-opposition filed is that the petitioner was given the opportunity as required u/s 49(5) as well as u/s 49(6) of the Regulation as he was issued with the notice of initiation of the confiscation proceeding as well as the opportunity to prove that the truck was not used by the driver with his knowledge, connivance or abatement and though the petitioner on receipt of such show cause submitted his representation and the case was adjourned till 9.10.2007, he did not participate in the proceeding on the said date and no application for adjournment was also filed, therefore, the case was heard and decided in his absence and the confiscation order was passed in accordance with the provisions of the Regulation. It has further been contended by the respondents in the affidavit-in-opposition that on receipt of the order dated 20.8.2007 passed by this Court, the DFO on 31.8.2007 requested the District Transport Officer, Karimganj to assess the value of the truck, who in turn, only on 28.9.2007 submitted the assessment report to the DFO and accordingly on 29.9.2007 informed the petitioner about the assessment made by the DTO, Karimganj and to take the interim custody of the vehicle by furnishing irrevocable bank guarantee to the tune of Rs. 8,25,000 which the petitioner had declined. It is the further case of the respondents that though an application for accepting the land security was filed, the same was rejected by the DFO vide order dated 5.10.2007 and this Court though passed the order on 15.10.2007 in WP(C) No. 5515/07, the same could not be implemented, as the final order of confiscation has already been passed on 9.10.2007. According to the respondents, the petitioner with a view to delay disposal of the confiscation proceeding has initially filed an adjournment application and thereafter did not participate in the proceeding on the date fixed, i.e., on 9.10.2007. The further stand in the affidavit-in-opposition is that there being adequate alternative remedy available by way of review as well as statutory appeal u/s 49(B) and u/s 49(C) of the Regulation, this Court may not entertain the writ petition filed by the petitioner challenging the order of confiscation dated 9.10.2007.

4. I have heard Mr. N. Dutta, learned senior counsel for the petitioner as well as Mr. P. Roy, learned State counsel appearing on behalf of all the respondents.

5. Mr. Dutta, learned senior counsel has submitted that petitioner has been deprived of the procedural safeguards as provided u/s 49 of the Regulation which are mandatory in nature and its infraction entails invalidation of the order of confiscation dated 9.10.2007. According to the learned senior counsel, the action on the part of the authorized officer in not allowing adjournment till 22.10.2007, though he did not disbelieve the illness of the petitioner, amounts to depriving him of his right to participate in the confiscation proceeding and to satisfy the authorized officer that the truck was not used by the driver with the knowledge, connivance or abatement of the petitioner. Mr. Dutta further submits that to have an effective participation in the confiscation proceeding against the petitioner, the authorized officer is duty bound to intimate him about the materials that may be used against him in such proceeding so that he can defend himself effectively and properly, which has not been done in the instant case as the petitioner has

not been intimated about the materials available on record against him and also not been given the copy of the offence report. Therefore, according to the learned senior counsel, the impugned order dated 9.10.2007 is liable to be set aside being violative of the principles of natural justice as well as of the provisions contained in Section 49 of the Regulation. The existence of alternative remedy by way of review or appeal cannot be the bar in entertaining the writ petition challenging such illegal order passed by the authorized officer in violation of the principles of natural justice, submits Mr. Dutta. In support of his contention the learned senior counsel has placed reliance on the Apex Court judgment in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, as well as of a Single Bench judgment of this Court in Abu Bakkr Ali (Md.) v. State of Assam and Ors. (1999) 1 GLT 633. Mr. Dutta has further submitted that it is apparent from the various orders passed by the authorized officer that he acted in haste, only with a view to avoid the orders passed by this Court in the earlier writ petitions for giving the interim custody of the vehicle and has in fact committed the contempt of this Court by willfully disobeying and/or violating the order passed by this Court. Therefore, Mr. Dutta submits that the impugned order dated 9.10.2007 may be set aside and the matter may be remitted to any other competent authority other than the respondent No. 3 for fresh disposal, as the DFO, by his conduct, appears to be bent upon to confiscate the vehicle without following the due process of law.

6. Mr. Roy, learned State counsel, per contra, has submitted that it is evident from the record of the confiscation proceeding as well as the statements made in the writ petition that the petitioner has submitted the reply pursuant to the notice issued to him u/s 49(5) of the Regulation. It is also evident that the opportunity as required to be given under Sub-section (6) of Section 49 of the Regulation was given and, therefore, it cannot be said that the principles of natural justice and the procedural safeguards provided by Section 49 of the Regulation have been violated. Mr. Roy submits that the petitioner in fact through his authorized representative, namely, his brother, participated in the proceeding by filing an application for adjournment and the authorized officer considering such application adjourned the case to 9.10.2007, about which though the petitioner was duly informed, he did not participate in the proceeding dated 9.10.2007 and, therefore, the authority had to proceed to finalize (the confiscation proceeding. According to Sri Roy, there being efficacious alternative remedy by way of review and statutory appeal u/s 49(B) and 49(C) of the Regulation, the present writ petition is not maintainable, more so when there is no violation of the principles of natural justice or the procedures laid down by Section 49 of the Regulation. Referring to the contention of the petitioner that the authorized officer has acted in haste only with a view to avoid the orders passed by, this Court in earlier writ petitions, the learned State counsel has submitted that the authority on receipt of the certified copy of the order dated 20.8.2007, immediately on 31.8.2007 requested the DTO, Karimganj to assess the value of the truck, who in turn only on 28.9.2007 assessed the value of the

same and accordingly, the DFO on 29.9.2007 informed the petitioner about such assessment and asked him to furnish the irrevocable bank guarantee for the said amount for release of the truck in his favour in the interim custody pursuant to the direction given by this Court, but the petitioner has expressed his inability to furnish the bank guarantee and though requested the DFO to accept the security in the form of landed property, the same being not acceptable for the reasons recorded in the order dated 5.10.2007, was rejected. It has further been submitted that as the authorized officer on 9.10.2007 has passed the final order in the confiscation proceeding, the order passed by this Court on 15.10.2007 directing release of the vehicle in interim custody without insisting for bank guarantee and after accepting other security and personal bond, could not be implemented. Mr. Roy, in support of his contention has placed reliance on a decision of the Apex Court in M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan, .

7. I have considered the submissions of the learned Counsel for the parties and also perused the records of the confiscation proceeding produced by the learned State counsel.

8. Chapter VIII of the Regulation provides for penalties and procedure to be adopted for imposing the penalties. Section 49(1) of the Regulation empowers any Forest Officer not below the rank of a Forester or any Police Officer not below the rank of a Sub-Inspector of Police, to seize any forest produce or such forest produce together with all tools, boats, motorized boats, vessels, cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles or materials used in commission of forest offence, when there is reason to believe that a forest offence has been committed in respect of the same. Sub-section (2) of Section 49 lays down the steps to be taken by officer seizing any property under Sub-section (1). Section 49(3) empowers any Forest Officer or Police Officer, to require the driver or any other person or persons in-charge of any vehicle to stop the same and cause it to remain stationary as long as reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried, which are in possession of such driver or other person in-charge of the vehicle, when such Forest Officer or Police Officer has reason to believe that such vehicle has been or is being used for transportation of any forest produce in respect of which any forest offence has been committed. Sub-section (4) of Section 49 empowers the Authorised Officer, for the reasons to be recorded in writing, to confiscate the forest produce seized together with all tools, vehicles, cattle, trucks, etc., used in committing any forest offence, upon recording his satisfaction of commission of a forest offence.

9. Sub-section (5) of Section 49 lays down the procedure to be adopted by the Authorised Officer before passing any order of confiscation, i.e., to:

(a) send an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issue a notice in writing to the person from whom the property is seized and to any person who may appear to the Authorised Officer to have some interest in such property and in cases of motorized boats, vessels, vehicle trucks etc. having a registered number to the registered owner thereof;

(c) afford to the persons referred to in Clause (b) above and reasonable opportunity of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and

(d) give to the Officer effecting the seizure and the person or persons referred to in Clause (b) or (c) above, a reasonable opportunity or being heard on a date or dates to be fixed for the purpose.

10. Sub-section (6) of Section 49 of the Regulation gives the persons referred to in Clause (b) of Sub-section (5), which includes the registered owner of any motorized boats, vessels, vehicle, trucks etc. an additional protection from confiscation. It provides that no order of confiscation can be made, if such persons prove to the satisfaction of the Authorised Officer that such tools, vehicles, machinery, trucks, vessel boats, motorized boats, rafts, carts, cattle, ropes, chain on any other implements, articles were used without his knowledge or connivance or abetment or as the case may be, without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of such object for commission of forest offence. Section 49 (6) of the Regulation, therefore, requires the Authorised Officer to give such persons, as referred to in Clause (b) of Sub-section (5) of Section 49, an opportunity to prove as envisaged in Sub-section (6).

11. Confiscation under Sub-section (4) of Section 49 of the Regulation being a penalty to be imposed by the Authorised Officer, on being satisfied that a forest offence has been committed in respect thereof, depriving the person concerned from the enjoyment of the property, the procedural safeguard as envisaged in Section 49(5) as well as in Section 49(6) have to be strictly observed. The Authorised Officer before passing an order of confiscation has to intimate, in the prescribed form, the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, about the initiation of the proceeding for confiscation of property; to issue notice to the person from whom the property is seized and to any other person who may appear to the Authorised Officer to have some interest in such property and also to the registered owner, of the motorized boats, vessels, vehicle, trucks etc. An opportunity to make representation within reasonable time to such persons is also required to be given apart from giving a reasonable opportunity to the officer effecting the seizure of being heard on a date or dates fixed for that purpose. The Authorised Officer, as Discussed above, is also required to give the opportunity to the persons concerned as required under Sub-section (6) of Section 49 of the Regulation.

12. Section 49B of the Regulation confers power on the Forest Officer not below

the rank of a Conservator of Forests, as empowered by the State Government by notification in the official gazette, to entertain an application filed by an aggrieved person and to call for and examine any record or any order passed u/s 49(4) and also to make such enquiry or cause such enquiry to be made and to pass such order as he deems fit. Such power, however, cannot be exercised by such officer, if appeal u/s 49C of the Regulation has already been filed. No order prejudicial to any person can also be passed without giving such person a reasonable opportunity of being heard. Section 49C of the Regulation provides for appeal by any aggrieved person against an order passed u/s 49(4) or Section 49B before the District Judge having jurisdiction over the area in which the property has been seized. Such appeal, however, has to be filed within 30 (thirty) days from the date of communication of the order appealed against.

13. In Abu Bakker Ali (supra) a Single Bench of this Court taking into consideration the various provisions of the Regulation has opined that the procedural protection enjoined in the Regulation is required to be looked into in the light of the amplitude of the power of summary nature and the grave effect of and consequences of the order of confiscation. The procedural safeguards envisioned by the Regulation insist strict observance. In the said case, the order of confiscation was interfered with as the notice of initiation of confiscation proceeding did not indicate about any offence report, nor anything about intimation, in the prescribed form, about initiation of the proceeding for confiscation of the truck involved, to the Magistrate. That apart order sheet in the confiscation proceeding was not properly maintained and the nature of hearing conducted and the steps taken therein have not been reflected. The record also did not reflect recording satisfaction by the Authorized Officer as required u/s 49(4) of the Regulation, in that case. The Authorised Officer's order was also found to have suffered from non-application of mind to the defence taken by the petitioner therein. Hence, in that case, the order of confiscation was interfered with though such order is appellable u/s 49C of the Regulation.

14. The main contention of the petition in this case is that since there is violation of procedural safeguard envisaged in Section 49(4), Section 49(5) and Section 49(6) of the Regulation, the impugned order needs to be interfered with and the proceeding may be directed to be heard by any officer other than the Divisional Forest Officer, the Authorised Officer, without insisting for exhaustion of alternative remedy available to the petitioner by way of review u/s 49B and appeal u/s 49C of the Regulation.

15. It is a settled position of law that restriction imposed by High Court in exercising the jurisdiction under Article 226 of the Constitution of India, in the event of availability of an efficacious alternative remedy, is a self imposed restriction. The High Court can in certain circumstances, namely, where the writ petition has been filed for enforcement of fundamental rights or where there has been a violation of the principles of natural justice or where order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, exercise the

jurisdiction under Article 226 of the Constitution and issue prerogative Writs, even where there is efficacious alternative remedy available. [Whirlpool Corporation (supra) and M.P. State Agro Industries Dev. Corporation (supra)].

16. In the case in hand, it is apparent from the materials available on record of the confiscation proceeding that on 14.6.2007, the vehicle in question belonging to the petitioner was seized by the forest officials u/s 49(1) of the Regulation as some forest produce was found to be carried in the said vehicle. The seizing officer on 15.6.2007 intimated the Authorized Officer about such seizure. On 16.6.2007, a report was submitted before the Chief Judicial Magistrate, Karimganj, about the arrest of the driver and the handyman of the truck and also the seizure, by which the said two accused persons were also handed over to the court. A notice dated 16.6.2007 was also issued to the petitioner to produce the proof of legality and origin of the forest produce seized and also to show cause as to why the vehicle seized shall not be confiscated to the State. The petitioner on receipt of such notice submitted his reply on 26.6.2007 to the Range Officer contending that he never allowed the driver or the handyman to carry any forest produce and if that was done, it was without his knowledge. The petitioner on 3.7.2007 filed a representation before the DFO, who is the Authorized Officer, for release of the truck in his favour u/s 49(A) of the Regulation. The offence report No. PK/5 was thereafter submitted on 20.7.2007 before the learned Magistrate having jurisdiction, alleging violation of different provisions of the Regulation, wherein the petitioner has been arraigned. The authorized officer on 25.7.2007 intimated the petitioner about initiation of the confiscation proceeding directing him to submit all relevant records, documents and papers in support of his claim and also to show cause as to why the seized vehicles and the articles shall not be confiscated to the State by giving him 30 days time to reply, copy of which was also marked to the learned Chief Judicial Magistrate. By the said notice, the petitioner was also informed about the report submitted by the Forester-I of Patharkandi Range on 24.7.2007 relating to the illegal felling, collection, destruction of forest produce and carrying of split timbers and detection and seizure of such articles and the vehicle on 14.6.2007 u/s 49 of the Regulation. The petitioner submitted his reply on 23.8.2007 stating, inter alia, that he never permitted the driver of the vehicle to carry any forest produce and that was done by the driver without his knowledge and also prayed for release of the vehicle u/s 49(A) of the Regulation.

17. The records further reveal that the Authorised Officer thereafter issued the notice dated 5.9.2007 to the petitioner and 9 others asking them to appear on 26.9.2007 in connection with the confiscation proceeding initiated, intimating that in the event of their failure to appear, such proceeding will be heard ex parte in their absence and will be disposed of on the basis of the materials available on record and founded on facts gathered. The petitioner on 26.9.2007 through his brother Azad Khan filed an application seeking 30 days time for hearing as he has been advised by the doctor to take complete bed rest for a month with effect from 23.9.2007 due to Viral Hepatitis-C. The Authorized Officer vide order dated

26.9.2007 though did not disbelieve the statement of the petitioner relating to his illness and the medical certificate issued, which was enclosed to the application for adjournment, instead of granting one month adjournment fixed 4.10.2007, on which date the evidences of 6 persons were recorded in the confiscation proceeding. While the proceeding was going on, another application on behalf of the petitioner seeking adjournment on the same ground of illness enclosing therewith a copy of the medical certificate dated 26.9.2007 was filed by the brother of the petitioner at about 3.15 PM. The authorized officer on the basis of such application adjourned the case till 9.10.2007.

18. The Authorised Officer, as it appears from the impugned order of confiscation, has proceeded to pass the order as the petitioner did not on the date fixed, i.e., on 9.10.2007 appear, by taking into account the materials available on record including the statement of witnesses examined on 9.10.2007. The notice which was issued to the petitioner by registered post with A/D, as it appears from the acknowledgement card available on record was not personally served on the petitioner, which was received by one Sultan Mohamad Khan for the petitioner. It is, however, not the case of the petitioner that he did not know the date of hearing-fixed, i.e., 9.10.2007. The petitioner in para-16 of the writ petition has averred that though he knew about the date fixed, he could not appear before the Authorised Officer because of his illness and as there was none present in his house who can represent him on 9.10.2007. The respondent No. 4, the Range Officer, in the affidavit-in-opposition did not deny such factual assertion. The Authorised Officer also did not believe the illness of the petitioner and the medical certificate. for which the adjournment was granted on 26.9.2007 on the basis of the application filed enclosing therewith the medical certificate issued by the doctor advising rest for a month w.e.f. 23.9.2007.

19. As observed above, the confiscation of the articles, vehicle etc. is a penal provision for violation of the provisions of the Regulation. Therefore, before passing an order of confiscation under Chapter VIII of the Regulation, the Authorized Officer is to give reasonable opportunity to the person concerned, meaning thereby such opportunity, which must be a reasonable one. In the case in hand, it was within the knowledge of the Authorized Officer that the petitioner was suffering from illness for which he was advised rest for a month with effect from 23.9.2007, therefore, the Authorized Officer, instead of proceeding to decide the confiscation proceeding, in the absence of the petitioner, ought to have adjourned the proceeding by giving another opportunity to the petitioner to participate in the proceeding, so as to enable him to substantiate his claim as reflected in the objection against the confiscation proceeding, more so when the petitioner on all earlier dates took steps. Moreover, the vehicle in question is still in custody of the forest department. The effort of the Authorized Officer ought to have been to decide the confiscation proceeding in presence of the petitioner, as an order of confiscation deprives the owner of the property from his right of enjoyment. The present writ petition for the aforesaid reasons, is not to be dismissed on the ground of availability of efficacious alternative remedy by way

of review and appeal. That being the position, I am of the view that the petitioner has been deprived of reasonable opportunity of being heard in the confiscation proceeding and hence, the order impugned dated 9.10.2007 is set aside.

20. The next question, which requires consideration is whether the said proceeding is directed to be decided by any other Authorized Officer.

21. The Divisional Forest Officer, in the present case is admitted, the Authorised Officer within the meaning of Chapter-VIII of the Regulation. The allegation of the petitioner against the Divisional Forest Officer is that he in spite of the direction issued by this Court vide orders dated 20.08.2007 and 15.10.2007 passed in WP(C) No. 3486/2007 and WP(C) No. 5515/2007, respectively, did not release the vehicle in question in favour of the petitioner in interim custody, which reflects his biasness.

22. By order dated 20.8.2007 passed in WP(C) No. 3486/2007, this Court directed the Divisional Forest Officer to assess value of the truck within a week from the date of receipt of the certified copy of the order and to release the vehicle to the petitioner in interim custody on furnishing adequate security for the truck to the satisfaction of the Divisional Forest Officer and on furnishing unqualified undertaking to produce the truck as and when required. The records reveal that the Divisional Forest Officer on receipt of the certified copy of the said order requested the District Transport Officer (DTO), Karimganj to assess the value of the truck on 31.8.2007, who only on 28.9.2007 assessed such value. The Divisional Forest Officer immediately thereafter, on 29.9.2007 informed the petitioner about such assessment of the value of the truck and to take the vehicle in interim custody by furnishing bank guarantee to the tune of the value of the truck assessed, which the petitioner did not comply on the ground that they cannot afford to furnish bank guarantee and instead filed an application to accept other security, i.e. in the form of land security of his brother, which was rejected by the Divisional Forest Officer vide order dated 5.10.2007. This Court, thereafter, on 15.10.2007, after passing of the order of confiscation on 9.10.2007, passed the order in W.P.(C) No. 5515/2007 filed by the petitioner challenging the order dated 5.10.2007, directing the Divisional Forest Officer to release the vehicle in favour of the petitioner without insisting on bank guarantee and on the basis of other security and bond offered, subject to his satisfaction. The said order naturally could not be implemented by the Divisional Forest Officer, as the truck in question has already been confiscated. From the said narration of facts it, therefore, cannot be held that the Divisional Forest Officer was bent upon not to implement this Courts order and to confiscate the property in favour of the State. The Authorised Officer, being a quasi-judicial authority in the matter of the confiscation proceeding, such proceeding should be allowed to be decided by such authority, namely the Divisional Forest Officer, Karimganj, in the present case, unless of course such officer has acted in such a manner, which disentitle him to take up such proceeding further. The proceeding before such

authority should not be transferred on the mere asking. The action on the part of the Authorized Officer, in the case in hand, do not justify transfer of the proceeding to any other officer authorized by law. Hence, the prayer of the petitioner in that regard is rejected. The petitioner is directed to appear before the Divisional Forest Officer, Karimganj, the Authorised Officer, on 20.6.2008, who shall decide the confiscation proceeding afresh within a period of 1(one) month from the said date of appearance of the petitioner. It is, however made clear that in the event the petitioner fails to appear on the date fixed, the proceeding shall proceed ex parte against him. The petitioner may approach the Authorised Officer for furnishing the copy of the offence report and other materials available on record, which may be the basis for deciding the confiscation proceeding.

23. This leads to the question relating to release of the vehicle in question in favour of the petitioner in interim custody. Since this Court vide orders dated 20.8.2007 and 15.10.2007 passed in WP(C) No. 3486/07 and WP(C) No. 5515/07 has directed the DFO to release the vehicle in favour of the petitioner in interim custody, on the conditions stipulated therein, the DFO shall release the vehicle accordingly in interim custody of the petitioner.

24. The writ petition is accordingly allowed to the extent indicated above. No costs.