

1999 SCC OnLine Gau 99 : (2000) 1 Gau LR 200

In the High Court of Gauhati
(BEFORE D.N. CHOWDHURY, J.)

Md. Abu Bakkar Ali ... Petitioner;

Versus

State of Assam and Ors. ... Respondents.

Civil Rule No. 4510 of 1998

Decided on April 5, 1999

Assam Forest Regulation, 1891, S. 49(4), (5) & (6) — Order of confiscation — Order of confiscation u/s 49(6) can be made only when the authorised officer is satisfied that a forest offence is committed in respect thereof — Materials must be there before the officer establishing the fact of commission of forest offence — Satisfaction of the officer is required to be conveyed in writing — Procedure for confiscation — Standard of proof required to be given under section 49(6) is not as high as is required for the confiscation of an article/property under sub-section (4) of S. 49 — Burden is not as onerous as indicated in S. 49(4).

The provisions referred to in sub-section (5) of Section 49 of the Regulation, 1891 contains the basics of the fair play in action. It has now become a established principle and a basic requirement of justice that where a persons's right, interest are affected by a judicial, quasi-judicial or administrative decision, he or she should be, provided with an opportunity to know and understand the allegation or the case made out against him/her and to make representation before the authority. For a fair adjudication of a subject under Section 49(4) of the Regulation, 1891, the authority is required to follow the following procedures, affording—

- (a) a right to know about the initiation of the proceeding including the materials sought to be relied upon;
- (b) a right to appear before the authorised officer to any person who has some interest in such property, and in case of motorised boat, boat, vessels, vehicles, etc., to the registered owner of the same;
- (c) a reasonable opportunity of making a representation within a reasonable time (a right to be given an opportunity to respond to the evidence); and



Page: 201

- (d) a reasonable opportunity of being heard on a date of dates fixed (a right to an oral hearing)

[Para 7].

The standard of proof required to be given by such person under the subsection (6) of Section 49 of the Regulation, 1891 is not as high as is required for confiscation of an article/property under sub-section (4) of section 49. The Legislature no doubt used the language "proves to the satisfaction of the Authorised Officer", it cannot, however, be equated with the same standard of proof as is required for confiscation under Section 49(4) of the Regulation, 1891. The word "prove" here means no more than to establish/evince/manifest by some facts or circumstances indicating about his or her absence of knowledge, connivance or abetment in the matter and that all reasonable and due precautions had been taken against the use of the object(s) referred to, in the commission of the forest offence. The word "prove" means no more than some materials sufficient to be left to the Authorised Officer to come to a conclusion/decision. The burden is not as onerous as indicated in sub-section (4) of Section 49 of the Regulation, 1891. The person concerned under sub-section (6) is to establish a reasonable and probable case though it may not be convincing as is required in the case of satisfaction of the Authorised Officer under sub-section (4). It will also depend on the fact

situations

[Para 7].

Advocates who appeared in this case :

Mr. A. Roy and Mr. A.J. Alia for the petitioner.

Mr. D. Goswami, Mr. B.D. Das and Mr. H.K. Sarma for the respondents.

Cases referred: Chronological

Jibon Bailoung v. State of Assam, 1998 (1) GLJ 234.

Mitthanlal Mishra v. State Govt, of M.P., AIR 1998 MP 67.

Asst. Conservator of Forest v. Sharad Ram Chandra Kate, (1998) 1 SCC 48.

Ram Chandra Singh v. State of W.B., 1997 Cri LJ 3576.

State of Maharashtra v. D. Jadav, 1995 Cri LJ 798.

State of M.P. v. Rakesh Kumar, 1995 Cri LJ 1037.

Ranjit Thakur v. Union of India, (1987) 4 SCC 611.

JUDGMENT AND ORDER

1. In this writ application under Article 226 of the Constitution of India, the extent and the content of the power of and the procedures to be adhered to by the Authorised Officer pertaining to seizure and confiscation of an article/property under the Assam Forest Regulation, 1891 is the subject-matter at issue, which arises in the following circumstances.

2. The petitioner is a registered owner of a truck bearing Registration No. NLA 3709 which operates as a public carrier. The Range Officer, Protection Range, Diphu, found the vehicle inside the Dhansiri Reserve Forest on 2.2.1998 at 11 AM while some person were



Page: 202

loading the truck with Bogi Poma and Badam, collected and stacked inside the Reserve Forest. The vehicle was accordingly seized in presence of witnesses. The petitioner stated that at the relevant time, when the incident took place, he was at Silchar and as such, he was totally unaware about it. On his return from Silchar when he was informed about the matter, he approached the respondent No. 3, The Divisional Forest Officer, Karbi Angalong, West Division, Diphu, for release of the vehicle. The petitioner received a notice dated 8th April, 1995 bearing No. FO-3/98/32103-104 dated 8.4.1995, advising him to appear the respondent No. 3 on 25.6.1998 and signed by the DFO, Karbi Anglong, West Division, on 6th of May, 1998. The petitioner appeared before the respondent No. 3 on the aforesaid date, on which date, however, the case was adjourned informing him that the next date would be intimated in due course. According to the petitioner, he had to move the High Court for release of the vehicle and the High Court entertained his petition and passed an interim order directing the authority to release his vehicle on furnishing an indemnity bond. As per direction of the Court, the petitioner moved the Authorised Officer for release of his vehicle, but the respondent instead of releasing the vehicle, passed the impugned order dated 20-8-1998, whereby the vehicle of the petitioner was confiscated under sub-section (4) of Section 49 if the Assam Forest Regulation, 1891 (hereinafter referred to as the Regulation, 1891), the legality and validity of which is challenged in this writ petition as being arbitrary and discriminatory.

3. The respondent No. 3, Divisional Forest Officer, Karbi Anglong, West Division,

Diphu, who passed the impugned order, contested the case and filed affidavit-in-opposition. The respondent asserted that the vehicle-in-question was seized by the In-Charge, range Officer, Protection Range, along with tools and equipments on 3.2.1998 as per the seizure memo and the District Magistrate, Karbi Anglong, was accordingly intimidated on 4.2.1998, informing inter alia that on 2.2.1998 at about 11 AM, the Forest Protection Party along with Home Guards one truck bearing Registration No. NLA 3709 with eight persons, while patrolling in the Dhansiri Reserve Forest, and subsequently also detected another truck bearing Registration No. NL-04/A 036 and after due search, found one person with a Carbine loaded with thirty two number of bullet. The respondent referring to a communication bearing No. PS/98/4(9)/37-38 dated 4.2.1998, addressed to the District Magistrate, Karbi Anglong, by the In-charge, Protection Range, Diphu, stated that from the recorded statements of the persons referred to in the



Page: 203

communication it was revealed that they came from Dimapur to take timber collected illegally from Dhansiri Reserve Forest. That the arrested persons were produced before the District Magistrate in accordance with the provisions of law. That the Authorised Officer thereafter issued notice dated 20.2.1998 calling upon the concerned person to submit documents regarding the ownership of the seized truck. Thereafter, the writ petitioner submitted a petition dated 5-3-1998, stating that the truck was forcibly taken to Dhansiri Reserve Forest and accordingly, asked for release of the vehicle. It was further stated that thereafter the respondent No. 3 by notice dated 19-3-1998, asked the petitioner and other concerned persons to appear before him on 17-4-98. However, thereafter again 25-6-98 and 25-7-98, were fixed for further hearing and finally by an order dated 20-8-98, the truck was confiscated. That the respondent at all the relevant time, acted lawfully and afforded reasonable opportunities to the petitioner to defend his case and passed the impugned order bonafide and in accordance with law.

4. Mr. A Roy, learned counsel appearing on behalf of the petitioner, submitted that the petitioner was deprived of the procedural safeguards as provided by law. Referring to the statutory provisions, more particularly to section 49 of the regulation, 1891, the learned counsel argued that the special statute conferred summary power on the authority, fraught with a serious consequence, and the same statute also provided procedural safeguards which is mandatory in content, any infraction of which will/would entail invalidation. Mr. Roy, the learned counsel for the petitioner, further, submitted that the order for confiscation is permissible only when the concerned officer is satisfied that a forest offence has been committed. The statute insists due application of mind to the fact situations requiring satisfaction of the authority as to the commission of a forest offence and the said satisfaction of the authority must be made known by a speaking order. The impugned order is not only perverse but is also devoid of reasons accordingly is contrary to the provisions contained in sub-section (4) of section 49 of the Regulation, 1891 and, therefore, unsustainable, submitted Mr. Roy, the learned counsel for the petitioner.

Mr. Roy, the learned the counsel, also submitted that the petitioner time and again pointed it out to the Authorised officer that the vehicle-in-question was used without his knowledge or connivance and, therefore, he could not be held guilty of abetment and in such



Page: 204

a situation, the Authorised Officer had no alternative, but to release the vehicle/truck.

In support of his contentions, Mr Roy, the learned counsel, referred to the decisions in *Ranjit Thakur v. Union of India*, reported in (1987) 4 SCC 611; *Asstt. Conservator of Forest v. Sharad Ram Chandra Kale*, reported in (1998) 1 SCC 48; *Mitthanlal Mishra v. State Govt, of MP*, reported in AIR 1998 MP 67; and *Jibon Bailoung v. State of Assam*, reported in 1998 (1) GLJ 234. Lastly, Mr. A Roy, the learned counsel submitted that the Authorised Officer, in the instant case, maliciously and in a most illegal fashion, passed the impugned order.

5. Mr. B.D. Das, learned counsel appearing on behalf of the respondent, firstly questioned the maintainability of the writ petition and submitted that the order passed under Section 49(4) of the Regulation, 1891 which is impugned in this proceeding, is an appealable order under the provisions of Section 49 C of the Regulation, 1891. Advertising to the merits, Mr. B.D. Das, the learned counsel for the respondent, referred to the magnitude of the situation those are to be faced by the Forest officials at the ground level, and submitted that to counteract the calculated moves of the smugglers who are denuding the forest wealth, the Statute has armed the authorities to take necessary measures including confiscation. Referring to the Statutory provisions, Mr Das, the learned counsel has pointed out that the Statute insists for issuance of notice on the person(s) who has/have some interest in such property affording opportunity of making representation and for hearing of the party/parties concerned. That the respondent assiduously adhered to the procedure prescribed and the Authorised Officer on evaluation of the facts situation, found that a forest offence was committed and the vehicle-in-question was used in committing the said forest offence and accordingly, ordered for confiscation and auction of the said vehicle.

In support of his contentions, the learned counsel for the respondent, placed reliance on the decisions in *Ram Chandra Singh v. State of West Bengal*, report in 1997 Cri LJ 3576; *State of Maharashtra v. VD Jadhav*, reported in 1995 Cri LJ 798; *State of M.P. v. Rakesh Kumar*, reported in 1995 Cri LJ 1037.

6. The law relating to forests, forest-produce and the duty leviable on timber in the State of Assam, is regulated by the Assam Forest Regulation, 1891. The Regulation, 1891 provides for declaration of a certain forest area as reserved forest by notification to be



Page: 205

published in Official Gazette under Section 17 and such forests are deemed to be a reserve forest from the date so fixed by the notification and the lands thereof become vested in the State Government. Penalties for trespass into or damage to the reserved forests and acts prohibited in such forests are provided for in Regulations 24 and 25 of the Regulation, 1891, respectively. General protection of Forests and forest produce, control of forest produce-in-transit, etc., are all regulated by the Regulation, 1891. Chapter VIII of the Regulation, 1891 provided for penalties and procedure to be adopted for imposing the same. It may be stated here that to combat the large scale erosion of forest wealth, the Legislature introduced the Assam Forest Regulation (Amendment) Act, 1995 which brought a large scale amendment in the Regulation, 1891. Sub-section (1) of Regulation 49 of the Regulation, 1891 empowers any Forest Officer not below the rank of Forester or any Police Officer not below the rank of Sub-

Inspector of Police to seize any forest produce or such forest produce together with all tools, boats, motorised boats, vessels, cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles or materials used in the commission of forest offence when there is reason to believe that such a forest offence has been committed in respect of any forest produce. On such seizure, the concerned officer is to adhere to the steps/procedures provided for in sub-regulation (2) of Regulation 49 of the Regulation, 1891. Sub-section (3) authorises the prescribed Forest of Police Officer to stop a vehicle and to inspect and verify the goods carried in the vehicle. Sub-regulation (4) of Regulations 49 of the Regulation, 1891 provides that subject to the provisions of sub-sections (5) and (6), where the authorised officer upon production before him of the property seized or upon receipt of a report about seizure as the case may be, and after such personal inspection or verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorised boats, boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence. Sub-regulation (5) of Regulation 49 of the Regulation, 1891 envisages that the Authorised Officer is to adhere to the following steps before confiscation:

- (a) to 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 seizure



Page: 206

has been made;

- (b) to issue a notice in writing 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 in cases of motorised boats, vessels, vehicles, trucks, etc., having a registered number to the registered owner thereof;
- (c) to afford to the persons referred to in clause (b) above a reasonable opportunity of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and
- (d) to 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.

Under Regulation 49(6) of the Regulation, 1891, no order of confiscation under sub-section (4) of any tools, boats, motorised boats, vessels, cattle, carts, rafts, machinery, vehicles, trucks, ropes, chain or any other implements, articles (other than timber or forest produce) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of the Authorised Officer that such tools vehicles, machinery, vehicles, trucks, vessels, boats, motorised boats, rafts, carts, cattle, ropes, chain or 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 the object aforesaid for the commission of forest offence.

7. An order of confiscation can be made only when the Authorised Officer is "satisfied that a forest offence is committed in respect thereof". At arrive at the satisfaction, there must be materials before the officer establishing the fact that a

forest offence has been committed. The satisfaction of the officer is required to be conveyed in writing. Apart from Satisfaction of the Authorised Officer and recording reasons therefor, there must be materials to show that the procedure prescribed under Regulation 49 (5) was assiduously complied/followed. Confiscation under Regulation 49(4) of the Regulation, 1891 is a penalty imposed on the strength of the powers conferred thereunder. Confiscation is an act as a measure of penalty imposed by the State on contravention of the provisions as laid down in the Regulation, 1891. It is a move by which a private property of a lawful owner is seized by the State without compensation to the owner as a penalty for the offence committed,



Page: 207

through its Authorised Officer.

The law prescribes the procedure for confiscation. The statute armed the officer(s) to confiscate the articles mentioned in the Statute and at the same time provided the procedural safeguards. The procedural protection enjoined in the Regulation, 1891 is required to be looked into in the light of the amplitude of the power of summary nature and the grave effect of an consequences of the order. In that context, the procedural safeguards envisioned by the Statute insist for strict observance. In *Ranjit Thakur* (supra) while dealing with a matter arising out of summary Court Martial, the Supreme Court emphasising on procedural safeguards, made the following observations:

".....The Act and the Rules constitute a self contained code, specifying offences and the procedure for detention, custody and trial of the offenders by the court-martial."

"The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the summary jurisdiction.... The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute. The oft-quoted words of Frankfurter, J. in *Vitarelli v. Seaton* are again worth recalling:

"... if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.'

(359 US 535, 546-47 : 3 L.Ed.2d 1012, 1021)

The history of liberty' said the same learned Judge 'has largely been the history of observance of procedural safeguards.'

(*McNobb v. US*, 318 US 332, 347 : 87 L.Ed. 819, 827)"

The provisions referred to in sub-Regulation (5) of Regulation 49 of the Regulation, 1891 contains the basics of the fair play-in-action. It has now become an established principle and a basic requirement of justice that where a person's right, interest are affected by a judicial, quasi-judicial or administrative decision, he or she should be provided with an opportunity to know and understand the allegation or the case made out against him/her and to make a representation before the authority. For a fair adjudication of a subject under Regulation 49(4) of the Regulation, 1891, the



Page: 208

authority is required to follow the following procedures, affording—

- (a) a right to know about the initiation of the proceeding including the materials sought to be relied upon;
- (b) a right to appear before the Authorised Officer to any person who has some interest in such property, and in case of motorised boat, boat, vessels, vehicles, etc., to the registered owner of the same;
- (c) a reasonable opportunity of making a representation within a reasonable time (a right to be given an opportunity to respond to the evidence); and
- (d) a reasonable opportunity of being heard on a date or dates fixed (a right to an oral hearing).

Regulation 49(6) enjoins upon the concerned person to satisfy the Authorised Officer that the articles/tools, etc., were used without his knowledge or connivance or abetment or the case may be, without the knowledge or connivance or abetment of his/her servant or agent and that all reasonable and due precautions had been taken against the use of the object(s) for the commission of the forest offence; it is a shield to protect an innocent person without whose knowledge or connivance or abetment or those of his/her servant or agent, the offence took place. A duty is cast on such person to establish his/her plea.

In *Jibon Bailoung* (supra), the Court dealing with the nature of proof required to be established by the person referred to in clause (d) of sub-Regulation (5) of Regulation 49 of the Regulation, 1891 held that the person is required to establish a probable case. The standard of proof required to be given by such person under sub-Regulation (6) of Regulation 49 of the Regulation, 1891 is not as high as is required for confiscation of an article/property under sub-section (4) of Section 49. The Legislature no doubt used the language “proves to the satisfaction of the Authorised Officer”; it cannot, however, be equated with the same standard of proof as is required for confiscation under Regulation 49(4) of the Regulation, 1891. The word “prove” here means no more than to establish/evinced/manifest by some facts or circumstance indicating about his or her absence of knowledge, connivance or abetment in the matter and that all reasonable and due precautions had been taken against the use of the object(s) referred to, in the commission of the forest offence. The word “prove” means no more than some materials sufficient to be left to the Authorised Officer to come to a conclusion/decision. The burden is not as onerous as indicated in



sub-Regulation (4) of Regulation 49 of the Regulation, 1891. The person concerned under sub-section (6) is to establish a reasonable and probable case though it may not be convincing as is required in the case of satisfaction of the Authorised Officer under sub-Regulation (4). It will all depend on the fact situations.

8. From the records of the proceeding, it appears that a notice bearing No. FO.3/98/32103-104 dated 8th April, 1995 (sic) signed on 19th March, 1998 by the Authorised Officer, amongs others, was also sent to the petitioner on the subject of confiscation proceeding against seizure of Forest produce, which reads as follows:

“Whereas it appears that you are to give material evidence for prosecution/in defence, you are hereby summoned to appear before me in the office of the undersigned at 1 P.M. on 7.4.1998 to dispose of the above case failing which the

case will be heard exparte in your absence and will be disposed of on the basis' of material evidences and exhibits already on records or founded on facts gathered on witnesses, etc.

Given under my hand and seal of this office on 19th day of March 1998."

The above notice did not indicate about any offence report, nor anything about intimation in the prescribed form about initiation of proceeding for confiscation of the truck before the Magistrate having jurisdiction to try the offence on account of which the seizure was made. The above notice was responded to by the petitioner. Prior to the above notice, vide No. FO-3/98/723-28 dated 20-2-1998, a general notice was issued which read as follows:

"It is for general interest to all concerned that on 02-02-1998 the staff of Range Office, Protection Range, Diphu, has seized two trucks bearing Regn. No. NLA-3709 and No. — 04/A 0306 is presently in the custody of the Divisional Head Quarter.

The seized trucks No. NLA-3709 and No. — 04/A 306 is liable to be confiscated under Section 49 of AFR (Amendment) Act 1995.

So, all are hereby called upon to produce legality and proof of original ownership of the seized trucks No. NLA-3709 & NL-04/A 0306 on or before 20/03/1998.

Please also show cause as to why the seized trucks shall not be confiscated on the date."

The aforesaid communication was forwarded to the Deputy Commissioner, Karbi Anglong, the Deputy secretary, in-charge



Page: 210

Forests, Karbi Anglong, The Divisional Forest Officer, East, the Range Officer, Protection range, Diphu, all Range Offices for information and wide circulation and Notice Board. However, the said notice did not refer to the communication sent by the Incharge, Protection Range, Diphu dated 4-2-1998, to the District Magistrate, Karbi Anglong, producing the arrested person and praying for remand of the said accused person to Jail hajot. The petitioner responded to the notice dated 20.2.1998, vide his communication dated 6-3-1998 whereby he stated that at the relevant time, he went to his home at Silchar for celebration of Id-Ud-Zuha and during his absence the driver took his truck at the stand for hire on 2-2-1998. That in the meantime "some unknown persons forcibly and pointed out the gun (sic) to my driver for hiring towards Dayapur side. But they are ordered to (sic) go the Dhansiri R.F. for carrying the logs and the Forest Protection Party caught my driver and handiman. As such, I am owner of the said truck the illegalities totally unknown (sic).".

9. I have gone through he record of the proceedings. It appears that the case was finally taken up on 20-8-1998. The order sheets are not properly maintained. The case was earlier fixed on 17-4-1998, 25-6-1998, as it appears form the order-sheet, and the matter was put up before the Authorised Officer. The Authorised Officer postponed the hearing of the matter to 25-7-1998 since the In-Charge, Protection Range, was not available on those dates. The order-sheet does not indicate as to what happened on 25-7-1998, but from the endorsement made to the DFO/Authorised Officer by the office, it transpires that


"As the owner did not appear (sic) on 25-7-1998. Hearing not conducted. Now the owner appeared today, i.e., 20.8.1998 and verbally requested to conduct hearing today, if possible. Pl. advice if hearing can be conducted. Put up."

And the DFO/Authorised Officer made the following:

Note:

"can be conducted. Call the owner, i/c Protection, etc., at 3 p.m. today."

As to what was the nature of hearing and the steps taken therein is not shown. However, from the impugned order dated 20-7-1998, it is found that the petitioner as well as the In-Charge, Protection Range, were present. The Authorised Officer recorded the statement of the owner that the vehicle was taken away from parking by threatening the driver towards Dayapur and then to Intanki. That

 Page: 211

subsequently, the owner came to know that the vehicle was lying in the West Divisional complex. Except this, there is no indication as to the statements given by the petitioner in the order-sheet. In the order, the Authorised Officer recorded the statement of the In-charge, Protection Range, that the vehicle-in-question was found inside the Dhansiri Reserve Forest on 2.2.1998 at 11 A.M. when eight persons were found loading the truck with Bogi Poma and Badam, collected and stacked in the Reserve Forest illegally. That one person also tried to attack the Forest staff on duty with sophisticated weapon, but fortunately the said person was overpowered. The vehicle-in-question was thereafter brought to the Divisional complex for safe custody and the smugglers were handed over to the lower Court. The Authorised Officer then noted:—

"According to the range Officer, Protection Range illegality was committed by smugglers from across the border. According to the owner also, illegality was committed. The owner confessed."

The Authorised Officer then reached at the following finding which he described as judgment:

"A detailed analysis of the foregoing clearly shows that the vehicle No. NLA-3709 was taken into the reserve Forest with an ill-motive of collecting timber illegally. The intention was to plunder one of the richest Reserve Forests of Asia. The forest staffs by regular, intensive, day and night patrolling are saving the valuable Reserve Forests even by risking their life. An offence has been committed.

It is therefore decided to confiscate the vehicle on the following grounds—

- (1) Trespass into Reserve Forest area
- (2) Committing illegal activity
- (3) Merciless destruction of rare and valuable species of Reserve Forest.

Sections Violated: (1) 24, 25, 40, 41 or AFR 1891, Act amended in 1995.
(2) Hon'ble Supreme Court's Judgment in Writ Petition (C) 202 of 1995, dated 15/01/1998.

Therefore the vehicle No. NLA-3709 is confiscated and will be put to auction.
Inform all concerned."

Save and except the statements referred to in the impugned order, no confessional statement appears to have been recorded from the records. The order does not record satisfaction of the Authorised

 Page: 212

Officer as required under Regulation 49(4) of the Regulation, 1891. The order also

does not indicate that the Authorised Officer ever addressed his mind to the defence taken by the petitioner.

In view of the above, the impugned order patently suffers from non-application of mind by the Authorised Officer and the same was passed contrary to the scheme set out in sub-Regulation (5) and (6) of Regulation 49 of the Regulation, 1891. The impugned order dated 20-8-1998, is, therefore, not sustainable in law.

What is the next step? When exercising discretion, the Court is to do justice between the competing interests. There is a marked distinction between a public law proceeding and a private law proceeding, — there should be therefore a difference of approach in the exercise of discretion in a public law proceeding to that in a private law proceeding. In a public law proceeding, normally, not only it affects the immediate parties but the public at large or a section of the public as well as the administration. Besides, in a case of breach of the principles of natural justice, it can well be taken care of and cured in appeal. If the appeal fulfils the requirements of the principles of fairness, in that event, there cannot be any further grounds of grievance.

In the instant case, the petitioner could have preferred an appeal under the Statute (Section 49C) and in that event, the Appellate Authority could have remedied the situation. Since the writ petition was already entertained by the Court and parties were heard on merit, it would not be proper now to reject the petition on that ground, more so after finding the breach of the Statutory provisions and contravention of the principles of natural justice.

10. On consideration all the aspects of the matter, I quash and set aside the impugned order dated 20-08-1998, passed in O.R. No. PS/26 of 1996-97, passed by the respondent No. 3, the Divisional Forest Officer-cum-Authorised Officer, Karbi Anglong, West Division, Diphu, confiscating and order for auction of the truck bearing Registration No. NLA-3709.

The respondent No. 3 may now proceed with the confiscation proceeding in accordance with law afresh affording adequate opportunity to the petitioner to defend in terms of the Statute and pass necessary directions by a reasoned order, keeping in mind the provisions of sub-Regulation (5) and (6) of Regulation 49 of the Regulation, 1891 as well as the observations of this Court. During the pendency of the proceeding, the vehicle-in-question, viz., the truck bearing Registration No. NLA-3709, shall remain in custody of the petitioner, subject to the condition that the petitioner shall



furnish a Bank Guarantee of Rs. 1,00,000 (Rupees one lakh) only. In addition, the petitioner shall also furnish an indemnity bond for an amount of Rs. 1,00,000 (Rupees one lakh) only. On fulfillment of the above conditions, the respondent No. 3 shall forthwith release the vehicle-in-question, if already not released. The petitioner shall produce the vehicle from time to time as and when demanded by the Authorised Officer for inspection. The custody of the vehicle all through-out the proceeding, as mentioned above, and further two weeks after furnishing a certified copy of the order on passing of the final order by the Authorised Officer on the conclusion of the proceeding, shall remain with the petitioner so as to enable the petitioner to take appropriate steps under the law before the appropriate forum in the event any adverse order is passed against the petitioner by the authorised officer finally.

The writ petition is allowed to the extent indicated. There shall, however, be no order as to costs.

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