

**(2013) 01 AHC CK 0472****Allahabad High Court****Case No:** C.M.W.P. No. 36788 of 2008

Tajammul Hussain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Jan. 21, 2013**Acts Referred:**

- Forest Act, 1927 - Section 2(2)(4), 26(g), 41, 42, 52

**Citation:** (2013) 6 AWC 5922 : (2013) 3 EFLT 618**Hon'ble Judges:** Sibghat Ullah Khan, J**Bench:** Single Bench**Advocate:** Naushad Siddiqui, for the Appellant;**Final Decision:** Disposed Of**Judgement**

Sibghat Ullah Khan, J.

Heard learned Counsel for the petitioner and learned Standing Counsel for respondents. This writ petition is directed against order dated 8.5.2007 passed by Authorised Officer/Regional Forest Officer, Kashi, Vanya Jeev Prabhag, Ramnagar, Varanasi. Through the said order, it was directed that petitioner's tractor and holders (forest produce) loaded thereupon which had been seized and confiscated would be kept in custody in Chakiya premises and after expiry of period of appeal proceedings for disposal of the tractor and said forest produce would be taken. The said order was passed in Case No. 35 of 2005, State of U.P. v. Tajammul. Hussain and Sri Bihari under sections 26(g), 41, 42, 52 and 52-A of Forest Act, 1927 as amended by U.P. in 1965 by U.P. Act No. 23 of 1965 and in 2000 by U.P. Act No. 1 of 2001. Against the said order, petitioner filed Appeal No. 23 of 2007 u/s 52-B of the Act. The Prescribed Authority/Special Secretary to Government of U.P. dismissed the appeal and approved the order dated 8.5.2007, hence this writ petition.

2. The allegation against the petitioner was that in the intervening night of 17/18th April, 2005 at about 2.30 a.m., petitioner's tractor was checked and it was found that

it was carrying two cubic meters bolder (patra). Bihari was driving the tractor. No permission to take out the bolder was shown by the driver. The tractor was stopped at Sultanpur Marg near Samal Canal and the tractor was coming from Chanuari Pahari Chhitampur Block K.N.-2. Bihari and another person sitting in the tractor, who were sent to the jail, stated that the tractor belonged to the petitioner. Tractor and bolder were seized/taken in custody. Appellant filed application for release of the tractor and bolder, on which the impugned orders were passed.

3. The authorities below held that it was a case of illegal mining from reserved forest. Petitioner, the owner of the tractor was found to be involved in the case and it was held that his acquiescence was there.

4. In this writ petition on 1.9.2008 following order was passed on the order-sheet:

Standing Counsel is granted three weeks further time to file a counter-affidavit.

The tractor and trolley of the petitioner was seized alongwith the goods by the authorities. The petitioner filed an appeal, which was also rejected. Consequently, the present writ petition.

From a perusal of the record, I find that the tractor and the trolley was seized on 18th of April, 2005, and in these three years, the condition of the tractor and trolley must have deteriorated. Consequently, no useful purpose shall be served if the tractor remains in the custody of the authorities.

Consequently, I direct the authorities to release the tractor and the trolley within 24 hours from the date of receipt of certified copy of this order subject to the petitioner furnishing a sum of Rs. One lakh by way of security. The District Forest Officer (respondent No. 3) will deposit this amount in an interest bearing Account and such deposit would be subject to further orders of the Court.

Certified copy of this order shall be made available to the learned Counsel for the petitioner on payment of usual charges within 48 hours.

5. After the above order, the amount of Rs. 1 lac was deposited and it was subsequently renewed. Tractor and Trolley were released. The case of the petitioner was that holders belonged to another person and without his consent or knowledge, his driver was carrying them.

6. As per section 2(2)(4) of the Act, rock, minerals including limestone and all products of mines or quarries are forest products.

7. Learned Counsel for the petitioner has argued that firstly no offence was committed as it is not proved that the bolder was taken out from any reserved forest area. Secondly, petitioner was not aware and even if it is assumed that bolder was being brought from reserved forest area, it was the action of his driver and petitioner was neither aware nor in connivance with the driver. Thirdly, confiscation is optional as the word used in section 52-A is "may" and not "shall". Lastly, learned

Counsel for the petitioner has argued that the seizer was compoundable in view of section 68(2) which is quoted below:

On the payment of such sum of money, or such value, or both, as the case may, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, no further proceedings shall be taken against such person or property.

8. Learned Counsel for the petitioner has cited the following authorities:

9. The first authority is of [Pijush Kanti Mondal Vs. State of West Bengal](#), interpreting section 59-A of the Forest Act as added by West Bengal and holding that the word used is "may" hence it is the discretion of the authorised officer to pass or not to pass order of confiscation depending upon the facts of the case. Similar is the provision of section 52-A as added by U.P.

10. The second authority is of Baddu v. State of Madhya Pradesh given in Writ Petition No. 9266 of 2008, decided on 22.3.2011.

11. The third authority is in [Bhagwandeen Vs. State of U.P.](#) . In the said case it was held that knowledge of the vehicle owner had been held on the basis of presumption, which was not correct.

12. In my opinion, under the facts and circumstances of the case, the authorities below should have considered as to whether it was a fit case for confiscation or not and whether compounding u/s 68 was warranted or not.

13. Learned Counsel for the petitioner has most vehemently argued that question of compounding should have been considered in accordance with section 68(2) of the Act. In my opinion, the other findings regarding knowledge of the petitioner and bolder having been taken from the reserved forest are findings of fact suffering from no such error which may warrant interference in exercise of writ jurisdiction.

14. However, the authorities below committed patent error of law in not considering the question of compounding in accordance with section 68(2) of the Act. No useful purpose will be served by remanding the matter. Prima facie under the facts and circumstances of the case Rs. 50,000/- would be appropriate amount to be directed to be paid by the petitioner u/s 68(2) of the Act.

15. Accordingly, impugned orders are set aside and substituted by a direction to pay Rs. 50,000/-. The amount of Rs. 1 lac has already been deposited under order of this Court. Accordingly, impugned orders of confiscation of tractor and trolley are set aside. Matter is compounded on payment of Rs. 50,000/- by the petitioner. The amount of Rs. 1 lac has been kept in interest bearing account. Accordingly, it is directed that out of the total amount i.e., the principal amount of Rs. 1 lac and the interest which has actually accrued, an amount of Rs. 50,000/- shall be adjusted as amount payable by the petitioner u/s 68(2) of the Act as aforesaid and rest of the

amount, i.e., Rs. 50,000/- of the principal and the total interest accrued thereupon shall at once be returned to the petitioner in no case beyond two months from the date of filing of certified copy of this judgment before the authority where the amount was deposited. Writ petition is disposed of as above.