

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 07TH DAY OF SEPTEMBER 2020 / 16TH BHADRA, 1942

WP(C).No.5042 OF 2020 (E)

PETITIONER:

M/S.SMART LOGISTICS,
UNITY BUILDING PUTHIYAPALOM, MOORIYAD ROAD,
CHALAPPURAM, KOZHIKODE, REPRESENTED BY ITS MANAGING
PARTNER, MR.M.GOPINATH, AGED 40 YEARS,
S/O. DAMODARAN, PRANAVOM HOUSE, KARAKAMPALOM,
PARAMB, KALLAI, KOZHIKODE.

BY ADVS.
SRI.ANOOP.V.NAIR
SHRI.NIKITHA ANTONY

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAURAM-695001.
- 2 THE SUB INSPECTOR OF POLICE,
VATAKARA POLICE STATION,
CALICUT DISTRICT-673101.
- 3 ADDL.R3.
THE NARCOTICE DRUGS AND PSYCHOTROPIC SUBSTANCES AND
CONVEYANCE DISPOSAL COMMITTEE, KOZHIKODE DISTRICT.
REPRESENTED BY DISTRICT POLICE CHEIF, KOZHIKODE
DISTRICT - 673001.
- 4 ADDL.R4.
THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695001.
ADDL. R3 AND R4 ARE IMPEADED AS PER ORDER DATED
19.03.2020 IN IA 1/2020 IN WPC NO. 5042/2020.

BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-08-2020, THE COURT ON 07-09-2020 DELIVERED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

W.P.(C) No.5042 of 2020

Dated this the 7th day of September, 2020

J U D G M E N T

A lorry, worth lakhs of rupees, which is owned by the petitioner firm by name M/s.Smart Logistics, is under the threat of disposal by the State under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'). The reason is that the driver of the lorry had kept 120 grams of ganja in the cabin of the lorry.

2. The writ petitioner is a partnership firm conducting transport and parcel services. The petitioner firm is the owner of the lorry bearing the registration number KL-11/BL-6372. This vehicle was intercepted and searched by the police. It was then found that the driver had kept 120 grams of ganja in the cabin of the lorry. The police seized the ganja and the lorry and registered

a case against the driver under Section 20(b)(ii)(A) of the Act. The vehicle was produced before the Judicial First Class Magistrate-I, Vatakara. The petitioner filed an application under Section 451 of the Code of Criminal Procedure, 1973 (for short 'the Code') for granting interim custody of the vehicle to it. The application was dismissed by the learned Magistrate as per Ext.P2 order. Thereafter, the petitioner has filed this writ petition.

3. The reliefs sought in the writ petition, after its amendment, are the following:

"(i) issue a writ of mandamus order or direction directing the 2nd respondent to release the vehicle bearing No.KL 11 BL 6372 forthwith to the petitioner, as an interim custody, upon conditions if any, and report the matter to the Judicial First Class Magistrate Court-I, Vatakara.

(ii) issue a writ of mandamus order or direction directing the additional respondents 3 and 4 to release the ASHOK LAYLAND ECOMET LORRY bearing registration No.KL 11 BL-6372 to the petitioner upon conditions if any, forthwith, after intimating the release to the concerned Magistrate, pending disposal of the case.

(iii) issue such other writ, order or direction which this Honourable Court deems fit to grant to the facts and circumstances of the case."

4. The second respondent in the writ petition is the Sub Inspector of Vatakara police station. The third respondent is the Drug Disposal Committee of Kozhikode District which is constituted under Section 52A of the Act. The fourth respondent is the Excise Commissioner and it appears that he is an unnecessary party to the writ petition.

5. The aforesaid reliefs are claimed in the writ petition on the following grounds: The petitioner firm or its Managing Partner is not in any manner connected with the offence alleged against the driver of the vehicle and that they had no knowledge about the carrying of any contraband substance in the lorry. The vehicle is proposed to be disposed of by the third respondent. Since the vehicle is not involved in the commission of the offence alleged against the driver, it is liable to be released to the petitioner.

6. The District Police Chief, Kozhikode, who is the Chairman of the third respondent Drug Disposal Committee, has filed

counter affidavit in the writ petition. The crux of the contentions raised in the counter affidavit filed by the third respondent can be stated as follows. The lorry KL-11/BL-6372 owned by the petitioner firm is involved in the case registered as Crime No.12/2020 of Vatakara Police Station under Section 20(b)(ii)(A) of the Act. The vehicle was seized by the Vatakara police while conducting patrol duty when it was found that 120 grams of ganja was kept in the cabin of the lorry. The vehicle and the contraband substance were produced before the learned Magistrate as per Section 52A of the Act and an inventory was prepared and the learned Magistrate has duly certified the inventory. The second respondent has made a requisition to the Drug Disposal Committee to proceed further in terms of Section 52A of the Act for disposal of the contraband as well as the vehicle. The prosecution case is that the accused was transporting the ganja for the purpose of sale. The contention of the petitioner that the vehicle is not involved in the crime is not correct. The intention of the Legislature in enacting the provision contained under Section 52A of the Act is not to preserve the

conveyances or drugs till the culmination of the trial but to immediately dispose of the same. Sections 60 to 63 of the Act deal with confiscation of the vehicle while Section 52A of the Act deals with disposal of the vehicle. The expression 'disposal' is different from the expression 'confiscation'. In view of the dictum laid down by this Court in **Shajahan v. Inspector of Excise : 2019 (5) KHC 401**, the Magistrate has got no power under Section 451 of the Code to grant interim custody of the vehicle to any person. When the power of the court to grant interim custody of the vehicle is taken away by the operation of law, it cannot be found that the Drug Disposal Committee has got authority to grant interim custody of the vehicle before its disposal. The duty of the Drug Disposal Committee is to dispose of the vehicle immediately as per the rules and regulations. The Drug Disposal Committee has got no power to release the vehicle on consideration of any request made by the registered owner. The writ petition is without any merit and it is liable to be dismissed.

7. Heard Sri.Anoop V. Nair, learned counsel for the petitioner and also Sri. Suman Chakravarthy, learned Senior Government Pleader.

8. Before considering the merits of the writ petition, the provisions contained in Section 52A of the Act and the notification issued by the Central Government under that section have to be noticed.

9. Section 52A(1) of the Act provides that, the Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure specified.

10. Section 52A(2) of the Act provides that, where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars and other particulars as the officer referred to in sub-section (1) may consider relevant to their identity in any proceedings under the Act and make an application, to any Magistrate for the purpose of certifying the correctness of the inventory so prepared or taking, in the presence of such Magistrate, photographs of such drugs or substances or conveyances and certifying such photographs as true or allowing to draw representative samples of such drugs or substances in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

11. Section 52A(3) of the Act states that, where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application. Section 52A(4) of the Act states that, notwithstanding anything contained in the Indian Evidence Act or the Code of Criminal Procedure, every court trying an offence under the Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

12. After amendment by Act 16 of 2014, with effect from 07.03.2014, Section 52A of the Act provides for disposal of not only the contraband substances but also conveyances which are seized under the Act. The Central Government has issued Notification dated 16th January, 2015 (hereinafter referred to as 'the Notification') prescribing the procedure for disposal of the seized contraband substances and conveyances.

13. Paragraph 2 of the Notification provides that, all narcotic drugs, psychotropic substances, controlled substances

and conveyances shall be disposed of under Section 52A of the Act. Paragraph 3 of the Notification provides that, the officer - in-charge of the police station or the officer empowered under Section 53 of the Act shall initiate action for disposal of the seized contraband substances and conveyances under Section 52A of the Act.

14. Paragraph 4 of the Notification deals with the manner of disposal of the seized substances and the conveyances. Clause (1) of Paragraph 4 of the Notification provides for preparation of inventory and making application to the Magistrate as provided under Section 52A(2) of the Act by the officer concerned . Clause (2) of Paragraph 4 of the Notification provides that, after the Magistrate allows the application under sub-section (3) of Section 52A, such officer shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drug Disposal committee for a decision by the Committee on the disposal.

15. Paragraph 5 of the Notification provides for constitution of the Drug Disposal Committee and paragraph 6 specifies the functions of the Committee which includes passing orders for disposal of the seized items. Paragraph 7 of the Notification deals with the procedure to be followed by the Drug Disposal Committee with regard to disposal of the seized items. Paragraph 8 of the Notification provides for the quantity or weight and the value of the seized items in respect of which the Drug Disposal Committee can exercise its powers.

16. Paragraph 9 of the Notification prescribes the mode of disposal of the drugs. It is pertinent here to note that sub-clause (e) of Clause 5 of paragraph 9 of the Notification provides that seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee.

17. In **Union of India v. Mohanlal : (2016) 3 SCC 379**, the Apex Court has considered the provisions contained in the Notification and also issued directions with regard to the procedure to be followed in respect of the contraband substances and conveyances seized under the Act. The Apex Court has

directed that no sooner the seizure of any narcotic drug and psychotropic and controlled substance and conveyance is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act and such officer shall then approach the Magistrate with an application under Section 52A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required. The Apex Court has not made any direction providing for any separate and specific procedure for disposal of the conveyances seized under the Act.

18. In **Shajahan** (supra), a Division Bench of this Court has taken note of the decision in **Mohanlal** (supra) and held that any conveyance seized under the Act has to be disposed of in the manner provided under Section 52A(1) of the Act and that the Magistrate has no jurisdiction to consider an application under Section 451 of the Code for granting interim custody of a vehicle seized under the Act.

19. On a careful perusal of the reliefs claimed in the writ petition, it can be seen that what the petitioner firm claims is

interim custody of the vehicle which was seized under the Act by the police. The first relief sought is for issuing a writ of mandamus or direction to the second respondent Sub Inspector to release the vehicle on interim custody to the petitioner. The second relief sought is for issuing a writ of mandamus or direction to the Drug Disposal Committee to release the vehicle to the petitioner pending disposal of the case, which again means granting interim custody of the vehicle.

20. The petitioner had already filed an application under Section 451 of the Code for granting interim custody of the vehicle before the Judicial First Class Magistrate-I, Vatakara. The aforesaid application was dismissed by the learned Magistrate as per Ext.P2 order, by placing reliance upon the decision in **Shajahan** (supra). The petitioner has no case that the order passed by the learned Magistrate is illegal for any reason. The petitioner has not challenged the aforesaid order. In view of Ext.P2 order, the first relief sought by the petitioner for issuing a direction to the Sub Inspector to release the vehicle on interim custody is not maintainable.

21. Now the question to be considered is, whether a writ of mandamus can be issued to the third respondent for releasing the vehicle to the interim custody of the petitioner.

22. Section 63 (1) of the Act provides for the procedure in making confiscations. It provides that, in the trial of offences under the Act, if the accused is convicted, acquitted or discharged, the court shall decide whether any article or thing seized under the Act is liable to confiscation under Section 60 or Section 61 or Section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

23. The Notification does not specifically provide for any enquiry by the Drug Disposal Committee before ordering disposal of a conveyance seized under the Act. In **Shajahan** (supra), a specific contention was raised before the Division Bench that the conveyances involved in transportation of narcotic drugs or psychotropic substances may not belong to the actual transporter, in which event, confiscation and disposal by the competent officer without any enquiry in that regard may affect the rights of the owner of such vehicle. This contention was

negated by the Division Bench, holding as follows:

"In fact, Section 63 of the Act had provided for a procedure in making confiscations. Section 63 gives the power to the Court to decide whether any article or thing seized under the Act is liable to be confiscated in terms of Section 60 or Section 61 or Section 62 of the Act. Before the amendment to Section 52A, conveyance was not included as an item which should be seized and disposed. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into account the fact that most of the transportation are done in conveyances which itself is defined under Section 2(viii) as meaning "a conveyance of any description whatsoever including any aircraft, vehicle or vessel." Therefore, if any vehicle is involved in transportation of narcotic drug, psychotropic substance or controlled substance, such vehicles also could be seized and disposed of in terms of Section 52A(1) of the Act. Section 63 was a special procedure available at the inception of the Act and when the statute had been amended giving the power of disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances to a special officer, he will have to act

in accordance with the procedure prescribed under the Act or the Rules framed thereunder”.

24. The directions issued by the Apex Court in **Mohanlal** (supra) for disposal of seized items under the Act by the Drug Disposal Committee pertain not only with regard to narcotic drugs, psychotropic substances and controlled substances but also conveyances seized under the Act.

25. The decision of the Apex Court in **Mohanlal** (supra) and the Division Bench of this Court in **Shajahan** (supra) categorically hold that the power to dispose of a conveyance seized under the Act is vested with the Drug Disposal Committee constituted under the Notification dated 16th January, 2015. The mode of disposal of conveyance, which is envisaged as per sub-clause (e) of Clause 5 of paragraph 9 of the Notification, is sale by way of tender or auction as determined by the Drug Disposal Committee.

26. The Act is a complete Code in itself (See **Mukesh Singh v. State : 2020 SCC OnLine SC 700**). The provisions of the Act, unlike in some other statutes, for example Section 53 of

the Indian Forest Act, do not provide for release of any conveyance to the interim custody of any person pending finalisation of the confiscation proceedings or the culmination of the trial of the criminal case. The Notification also does not contain any provision for releasing a conveyance seized under the Act to the interim custody of any person.

27. The reliefs sought in the writ petition are for issuing writ of mandamus. Mandamus literally means a command. A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the authority or the officer concerned and there is a failure on the part of that authority or officer to discharge the statutory obligation. A mandamus can be issued by the Court only when the applicant establishes that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought. Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive and specific duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate

and specific legal remedy available and without which there would be a failure of justice. The chief function of the writ of mandamus is to compel the performance of public duties prescribed by statute. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a statute or by rules or orders having the force of law. A writ of mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through a writ of mandamus. Unless a statutory duty or right can be read in the provision, a writ of mandamus cannot be issued to enforce the same.

28. In the instant case, since the provisions contained in the Act or the Notification do not impose any duty on the Drug Disposal Committee to release a conveyance seized under the Act to the interim custody of any person, the relief sought in the writ petition for issuing a writ of mandamus directing the third respondent Committee to release the vehicle to the interim custody of the petitioner cannot be granted. The same view has been taken by this Court in **Rahul Santhosh v. State of Kerala**

(2020 SCC OnLine Ker 2987).

29. At this juncture, it is also to be noted that, when the criminal court has dismissed an application filed by a person under Section 451 of the Code for granting interim custody of a vehicle seized under the Act, on the ground that it has got no power to pass an order in that regard, an application under Section 482 of the Code for that purpose by the same person is, normally, not maintainable. The power under Section 482 of the Code shall be invoked only under exceptional circumstances in appropriate cases. When the jurisdiction of the Magistrate under Section 451 of the Code to release a vehicle seized under the Act stands excluded, an application for granting interim custody of such vehicle cannot be allowed by this Court by invoking the inherent powers of this Court under Section 482 of the Code.

30. In **State of West Bengal v. Sujit Kumar Rana : AIR 2004 SC 1851**, after noticing the provision contained in Section 482 of the Code, the Apex Court has held as follows:

"From a bare perusal of the aforementioned provision, it would be evident that the inherent

power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under Section 482 of the Code of Criminal Procedure would not arise".

(emphasis supplied)

31. The decision in **Sujit Kumar Rana** (supra) was recently followed by the Apex Court in **State of Madhya Pradesh v. Uday Singh : AIR 2019 SC 1597**.

32. In the light of the dictum laid down by the Apex Court in **Sujit Kumar Rana** (supra), it is crystal clear that once the jurisdiction of the Magistrate under Section 451 of the Code to deal with a vehicle seized under the Act stands excluded by the

decision of the Division Bench of this Court in **Shajahan** (supra), the power of this Court under Section 482 of the Code cannot be exercised to grant interim custody of such vehicle to a person.

33. Release of a vehicle, which was used for carrying contraband substance, as an interim measure has its own hazards. There is always the possibility of the same vehicle being re-used for similar activities. The intention of the Legislature in making the provision contained in Section 52A of the Act applicable to conveyances also appears to be to convey a peremptory and explicit message to the vehicle owners not to allow their vehicles for transporting narcotic drugs and contraband substances. The Legislature has intended stringent and harder measures to prevent drug trafficking.

34. This is not the end of the matter. Learned counsel for the petitioner has contended that the lorry owned by the petitioner was not used in carrying any contraband substance and therefore, the vehicle was not liable to be seized under the Act and consequently, it is not liable to be disposed of by the Drug Disposal Committee. Learned counsel has also contended

that, when the vehicle is not liable to be disposed of under Section 52A of the Act, it is liable to be released or returned to its owner.

35. Sections 42 and 43 of the Act deal with search and seizure. Section 42 of the Act empowers any competent officer, if he has reason to believe that any narcotic drug, or psychotropic substance or controlled substance in respect of which an offence punishable under the Act has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place, to enter into and search any such building, conveyance or place and seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under the Act. Section 43 of the Act empowers any competent officer to seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under the Act has been committed, and, along with

such drug or substance, any animal or conveyance or article liable to confiscation under the Act.

36. A close scrutiny of the provisions contained in Sections 42 and 43 of the Act would show that a conveyance is liable to be seized under the aforesaid provisions only when it is liable to confiscation under the Act. Then, the question arises, when a conveyance is liable to be confiscated.

37. Section 60(3) of the Act states when a conveyance is liable to confiscation. It reads as follows:

"Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use".

(emphasis supplied).

38. A close scrutiny of the above provision shows that a conveyance shall become liable to confiscation only when it is

“used in carrying” any narcotic drug or psychotropic substance or controlled substance. It further follows that seizure of a conveyance is contemplated and authorised only if the competent officer finds that the conveyance has been “used in carrying” any contraband substance under the Act. Therefore, the question arises what is the meaning of the expression “used in carrying”.

39. If the vehicle was entrusted to the driver by his employer for transporting specified goods and if very small quantity of contraband substance belonging to the driver, it being his personal property, was kept in the vehicle by the driver without the knowledge of the employer, can it be found that the vehicle was “used in carrying” the contraband substance? The answer can only be in the negative. The reason is that the purpose for which the vehicle was entrusted by the employer with his driver was for transporting the goods from one place to another and not for keeping or transporting the personal luggage of the driver. An accidental presence of the contraband article in a vehicle would not necessarily mean that the vehicle was used

in carrying the contraband substance. However, I may hasten to add that the question whether a vehicle was "used in carrying" contraband substance and whether it was liable to confiscation and consequently, to seizure and disposal under the Act is to be decided on a case to case basis, depending on the facts and circumstances of each case.

40. What emerges from the discussion above is the following: A conveyance seized under the Act shall be disposed of under Section 52A of the Act. But, a conveyance can be seized in exercise of the powers under Sections 42 and 43 of the Act only when it is liable to confiscation. A conveyance becomes liable to confiscation under Section 60(3) of the Act only when it is "used in carrying" any narcotic drug or psychotropic substance or controlled substance. Therefore, only a conveyance which is "used in carrying" any narcotic drug or psychotropic substance or controlled substance is liable to be disposed of by the Drug Disposal Committee under Section 52A of the Act.

41. Learned Senior Government Pleader would contend that the Notification does not contemplate any enquiry by the Drug

Disposal Committee and the duty of the Drug Disposal Committee is only to dispose of the conveyance by sale by way of tender or auction. Learned Senior Government Pleader would also submit that the Notification does not empower the Drug Disposal Committee to dispose of a conveyance by releasing or returning it to its owner or any other person.

42. The merit of the aforesaid submissions shall be examined. Clause (2) of Paragraph 4 of the Notification reads as follows:

"After the Magistrate allows the application under sub-section (3) of Section 52A of the said Act, the officer mentioned in sub-paragraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal committee for a decision by the Committee on the disposal" .

(emphasis supplied)

43. The abovementioned provision would show that the Committee has to take a decision on the disposal of the seized items. What is the decision or nature of the decision

contemplated here? Is it merely an order for sale by tender or auction? It is significant that the decision to be taken by the Committee is not a decision to dispose of the seized items but a decision on the disposal. What is contemplated is a decision after application of mind. When the seized item is a conveyance, the question whether the conveyance is liable for disposal by sale is to be decided by the Drug Disposal Committee before ordering its disposal.

44. The power conferred on the Drug Disposal Committee is not an arbitrary power. No doubt, the Notification does not contain any guidelines as to the circumstances under which the Drug Disposal Committee would be justified or would not be justified in ordering disposal of a conveyance seized under the Act. Even so, exercise of power by it shall be on proper and relevant considerations. If the Drug Disposal Committee, irrespective of the facts of the case, takes the decision that, merely because a conveyance is seized under the Act, it is liable to be disposed of by sale, it would be an erroneous and unsustainable decision.

45. The right to property, though not a fundamental right now, is still a constitutional right under Article 300A of the Constitution of India and also a human right [See **Hari Krishna Mandir Trust v. State of Maharashtra : 2020 SCC OnLine SC 631**]. Right to property includes right to own movable property. In view of the mandate of Article 300A of the Constitution, no person is to be deprived of his property save by the authority of law. Here, there is authority of law to deprive a person of the conveyance owned by him. But, the question is with regard to proper exercise of such authority under law.

46. True, the Notification does not specifically contemplate any enquiry by the Drug Disposal Committee before ordering disposal of a conveyance. But, a decision on the disposal of a conveyance is a matter affecting the right of a citizen to own property. Seizure made in violation of law amounts to deprivation of property. It would be against the principles of natural justice if a person is deprived of his property without making an enquiry on the plea raised by him. The principles of natural justice are applicable to decisions taken by administrative and quasi-judicial

authorities. It is the nature of the power and the circumstances and conditions under which it is exercised that will occasion the invocation of the principles of natural justice.

47. Even assuming that the function of the Drug Disposal Committee is only administrative in nature, when it exercises a power depriving a person of his property, the principles of natural justice are attracted. In **A.K.Kraipak v. Union of India : AIR 1970 SC 150**, the Constitution Bench has held as follows:

"The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is

increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi judicial power”.

48. Even an administrative order, which involves civil consequences, shall only be made consistently with the rules of

natural justice (See **State of Orissa v. Binapani Dei : AIR 1967 SC 1269** and **Mohinder Singh Gill v. Chief Election Commissioner : AIR 1978 SC 851**).

49. In **Automotive Tyre Manufacturers Association v. Designated Authority : (2011) 2 SCC 258**, it has been held as follows:

"It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi – judicial".

50. True, the applicability of the principals of natural justice can be excluded by necessary implication. But, the requirement

of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences relating to infraction of property. The principle holds good irrespective of whether the power conferred on a statutory body is administrative or quasi-judicial. When the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature and where no mechanism is provided for review or appeal on merits against the decision, it cannot be found that the statute has excluded the applicability of principles of natural justice.

51. In view of the abovementioned principles, it cannot be found that the Drug Disposal Committee has no power or necessity to hear a person who would be affected by its order on disposal of a conveyance. The requirement of giving reasonable opportunity of being heard to the person affected has to be read

into the provisions of the Notification, atleast when such a person seeks such an opportunity.

52. At this juncture, it is to be noted that, when seizure is illegal, normally, the property illegally seized, shall be returned (See **Commissioner of Commercial Taxes v. Ramkrishan : AIR 1968 SC 59**). Of course, if the property seized is contraband substance, it shall not be returned.

53. The discussion above leads to the conclusion that the petitioner is not entitled to get a writ of mandamus to be issued in his favour for releasing the lorry seized under the Act on interim custody. The petitioner has not challenged the constitutional validity of any of the provisions in the Notification. The petitioner has also not sought any declaration that the seizure of the lorry owned by it was illegal and void. The petitioner has not sought any relief for issuing any direction to the Drug Disposal Committee to finally dispose of the vehicle by releasing it to the firm. In such circumstances, in the instant case, it is not necessary for this Court to decide the question

whether the seizure of the lorry owned by it was illegal or not. However, it is only proper to grant an opportunity to the petitioner to make a representation to the Drug Disposal Committee raising its claim over the vehicle.

54. Consequently, the writ petition is disposed of as follows: The prayer for issuing a writ of mandamus to the respondents is rejected. The petitioner is at liberty to make a representation to the third respondent Drug Disposal Committee, within a period of fifteen days from today, raising its claim over the lorry owned by it which was seized under the Act. If any such representation is made by the petitioner, the third respondent Drug Disposal Committee, before taking a decision on the disposal of the vehicle, shall grant an opportunity of hearing to the petitioner and pass appropriate orders on the representation made by the petitioner. If the value of the vehicle is over twenty lakhs rupees and if the third respondent Drug Disposal Committee only sends its recommendation to the Head of the Department for the matter to be considered by the State Level Drug Disposal Committee, the representation made by the petitioner shall be

considered and appropriate orders shall be passed thereon by the State Level Drug Disposal Committee after granting an opportunity of hearing to the petitioner. Copy of the order passed on the representation made by the petitioner shall be communicated to it by the Drug Disposal Committee concerned and till such communication is made, the vehicle shall not be disposed of by the respondents and it shall be kept in the safe custody of the District Police Chief, Kozhikode pursuant to the interim order dated 19.03.2020 passed by this Court in the writ petition.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE RC AND THE
AUTHORIZATION CERTIFICATE OF NATIONAL
PERMIT (GOODS) AND PERMIT IN RESPECT OF
THE VEHICLE BEARING NO.KL-11 BL 6372.
- EXHIBIT P2 TRUE COPY OF THE ORDER DATED 20/01/2020
PASSED BY THE HON'BLE JFCM COURT I,
VATAKARA.

True Copy

PS to Judge