

**MANAWADU**  
v.  
**OFFICER-IN-CHARGE, POLICE STATION**  
**UDAPUSSELLAWA AND ANOTHER**

COURT OF APPEAL.

SIVA SELLIAH, J. AND T. D. G. DE ALWIS, J.

C. A. 643/83 - M. C. NUWARA ELIYA No 37665.

JULY 17. 1985.

*Transport of timber without a permit - Forest Ordinance s. 25 (1) read with s. 40 as amended by Act No. 13 of 1982 - Confiscation of lorry - Owner not aware and not given opportunity to show cause.*

Upon a conviction for the offence of transporting timber without a permit under the Forest Ordinance amended by Act No. 13 of 1982 the confiscation of the vehicle in which the illegal transport was done is automatic. Such vehicle is automatically forfeited to the State and shall vest absolutely in the State on the expiry of the appealable period if there is no appeal or upon the affirmation of the conviction in appeal if there is an appeal. The right of showing cause against the confiscation which earlier existed has been withdrawn by the amending Act No. 13 of 1982.

**Case referred to :**

(1) *Garland v. Carlisle (1837) 4 Cl. & F. 693, 705*

APPLICATION for revision of the order of the Magistrate of Nuwara Eliya.

*V. E. Selvarajah with Miss. Asoka Lokugambewa for petitioner.*  
*Nihara Rodrigo, S. C. for Attorney-General.*

*Cur. adv. vult.*

August 9, 1985.

**SIVA SELLIAH, J.**

This is an application for Revision by the petitioner of the order for confiscation made by the Magistrate of Nuwara Eliya on 17.5.83 of lorry bearing No. 26 Sri 2518 of which the petitioner was the owner without giving him an opportunity of showing cause against the confiscation.

The facts necessary for the determination of this application are as follows :

One Ekmon Wijesuriya, the 2nd respondent to this application, was charged in MC Nuwara Eliya with having on 15th May 83 at Gordon in Udapussellawa transported rubber timber in lorry No. 26 Sri 2518 to the value of Rs. 600 without a permit to do so in contravention of the Regulation described in the charge and with thus having committed an offence punishable under section 25 (1) read with section 40 of the Forest Ordinance. The 2nd respondent pleaded guilty to the said charges and was sentenced to a term of 3 months rigorous imprisonment suspended for 5 years and to a fine of Rs. 500 which the 2nd respondent paid. The Magistrate also ordered confiscation of the lorry No. 26 Sri 2518 in which the timber was transported. It is the petitioner's complaint that he was unaware of the transportation of timber by the 2nd respondent in the said lorry valued at Rs. 350,000 of which he was the owner and that he was not given the opportunity of showing cause against the confiscation and that there was thus a violation of the principle of *audi alteram partem* and a consequent denial of justice to him. Although in para 6 B & C of the petition for Revision the petitioner has urged that the regulations made by the Minister were null and void in law and thus the conviction of the 2nd respondent and the order for confiscation of the lorry were both illegal, these matters were jettisoned and were not urged before us at the hearing of this application ; the only point urged was that the order for confiscation was made without giving the petitioner an opportunity of being heard in violation of the *audi alteram partem* rule and that therefore the petitioner was denied natural justice. The learned State Counsel has refuted this and stated that the legislature has seen it fit to frame amending legislation Act No. 13 of 1982 by which upon conviction of the accused confiscation was automatic and the right of showing cause that had earlier existed had been withdrawn.

It is necessary at this stage to set out the provisions of section 40 of the Forest Ordinance and succeeding amendments thereto to show the gravity of the offence and punishment in the eyes of the legislature, due no doubt to the frequency of illicit felling of timber from State land.

Section 40 of the Forest Ordinance enacts as follows :

When any person is convicted of a forest offence, all timber or forest produce which is not the property of the Crown in respect of which such offence has been committed, and all tools, boats, carts, cattle, and motor vehicles used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation. Such confiscation may be in addition to any other punishment prescribed for such offence.

Section 40 of the principal enactment was amended by section 12 of Act No. 13 of 1966 by the substitution, for all the words from "shall be liable" to the end of that section, of the following

"shall, in addition to any other punishment prescribed for such offence, be confiscated by order of the convicting Magistrate

Provided that in any case where the owner of such tools, boats, carts, cattle or motor vehicles is a third party, no order of confiscation shall be made if such owner proved to the satisfaction of the court that he had used all precautions to prevent the use of such tools, boats, carts, cattle or motor vehicles, as the case may be, for the commission of the offence "

Section 40 of the Forest Ordinance was further amended by section 9 of Act 56 of 79 by the repeal of the proviso to that section.

Section 40 of the Forest Ordinance as last amended by Act 56 of 1979 was repealed by Act No. 13 of 1982 which by section 7 substituted the following :

- "40 (1) Upon the conviction of any person for a forest offence –
- (a) all timber or forest produce which is not the property of the State in respect of which such offence has been committed ; and
  - (b) all tools, boats, carts, cattle and motor vehicles used in committing such offence (whether such tools, boats, carts, cattle and motor vehicles are owned by such person or not), shall by reason of such conviction be forfeited to the State.

(2) Any property forfeited to the State under subsection (1) shall –

- (a) if no appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which the period prescribed for preferring an appeal against such conviction expires ;
- (b) if an appeal has been preferred to the Court of Appeal against the relevant conviction, vest absolutely in the State with effect from the date on which such conviction is affirmed on appeal.

In this subsection, 'relevant conviction' means the conviction in consequence of which any property is forfeited to the State under subsection (1)."

Section 25 (1) which provided the punishment upon conviction for breach of regulations under the Ordinance by a person was also similarly amended to provide for more stringent punishment. A consideration of all these enactments and amendments establish the need found by the legislature to increase the severity of punishment in respect of vehicles used for transport of timber or other forest produce without a valid permit to do so and as the last two amendments show not only was the opportunity given to show cause against confiscation done away with but also upon conviction of the offender, the vehicles in which the timber was transported became ipso facto forfeit irrespective of who the owner was and it immediately vested in the State. The legislature could then have not expressed its mind in clearer or more forceful terms. Thus whereas the original section 40 provided that such timber and vehicles used were liable to confiscation, section 12 of Act 13 of 1966 provided for confiscation with the proviso however that if the owner of the vehicle proved to the satisfaction of the Magistrate that he had used all precautions to prevent the use of the vehicles for the commission of the offence no confiscation can be made ; by the amending Act of 56 of 1979 the law pertaining to showing cause was repealed and finally with the object of deterrent legislation by section 7 of Act 13 of 1982 upon the conviction of any person for a forest offence any vehicle used for the commission of a forest offence (*whether such vehicle was owned by such person or not*), shall by reason of such conviction be forfeited to the State ; and by sub-section (2) where there had been no appeal against such conviction to the Court of Appeal, any property so forfeited vested absolutely in the State from the expiry date of the appealable period.

In this case the 2nd respondent did not appeal against his conviction. The forfeiture thus was automatic and the property (lorry) had vested absolutely in the State. It is thus quite evident that the Legislature had expressly withdrawn any right to show cause against forfeiture of the lorry to the State by the owner by the provision of section 7 of Act 13 of 1982. The Magistrate's order for confiscation of the lorry was thus a correct order. It is my view that where the legislature has explicitly withdrawn the right of showing cause that existed earlier by legislation to that effect there is no violation of the principle of *audi alteram partem* nor is there a denial of natural justice. Such provision can work hardship in genuine cases but this court cannot but implement the law as it stands.

Craies on Statute Law 7th Edition p. 87 states –

“But where the words of an Act of Parliament are plain the court will not make any alteration in this because injustice may otherwise be done.”

Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequence, for in that case the words of the Statute speak the intention of the legislature. Again at p. 90 :

“where the language is explicit, its consequences are for parliament, and not for the courts to consider. In such a case the suffering citizen must appeal for relief to the law giver and not to the lawyer” – *Garland v. Carlisle* (1) per Coleridge, J.

I am of the view that the contentions of the learned Counsel for petitioner must in the light of the amending legislation No. 13 of 1982 and the principles enunciated above fail however hard the consequences may be to the petitioner. The order of confiscation by the Magistrate is a legal and correct order and must remain. The application for Revision is accordingly dismissed.

T. D. G. DE ALWIS, J. – I agree

*Application dismissed.*