

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.39060 of 2013

Date: 31.12.2013

Between :

Hanumara Subhash Chandra Bose

... Petitioner

and

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Transport Department, Secretariat,
Hyderabad and others.

... Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

With the consent of both Sri Rajanikanth Jwala, learned counsel for the petitioner and the learned Government Pleader for Transport, this Writ Petition is disposed of at the stage of admission. The action of the second respondent, in not releasing the vehicle seized under check report, is questioned in this Writ Petition as being arbitrary and illegal. Sri Rajanikanth Jwala, learned counsel for the petitioner, would place reliance on **Shoukat Hussain v. Deputy Transport Commissioner and Secretary, Regional Transport Authority, Adilabad**^[1] and **Saleem Tours and Travels v. Joint Transport Commissioner and Secretary, RTA, Hyderabad**^[2] in this regard.

In **Shoukat Hussain**¹ a learned Single Judge of this Court held that, on a conjoint reading of Section 207(1) of the Motor Vehicles Act, 1988 (for brevity, 'the Act') and Rule 448 of the Rules while a motor vehicle was liable for being seized and detained, the owner of such vehicle is entitled to seek release of the seized vehicle subject to such terms and conditions as the competent authority may impose pending further action to be taken; the owner of the vehicle is exposed both to civil liability as well as penalties as envisaged under Section 192-A of the Act; but when the proceedings for imposing civil liability as well as the penalties are pending, the competent authority is not barred from exercising its power of release the seized vehicle only on the ground of pendency of a criminal case; in appropriate cases, the competent authority can always ensure that its condition does not deteriorate further, and the owner is not put to financial losses on account of its detention.

In **Saleem Tours**², a Division Bench of this Court held that a vehicle plying in breach of the conditions of permit, as regards the purpose of usage of the vehicle, can be seized under Section 207 of the Act and not under Section 8 of the Andhra Pradesh Motor Vehicles Taxation Act; the vehicle so seized cannot be detained until completion of enquiry under the Taxation Act and the payment of tax, if any, pursuant to the demand raised; the vehicle seized under Section 207 of the Act, on the ground of

contravention of the conditions of permit, should not be detained for an unduly long time; and on an application filed by the vehicle operator, the vehicle ought to be released with expedition subject to stipulation of conditions to ensure non-alienation of the vehicle and production of vehicle in connection with the enquiry, unless there were exceptional circumstances which make the release of vehicle frustrate the enquiry; such conditions may include furnishing of cash security of a reasonable amount which could be adjusted later on towards compounding fee or tax if any demanded; the demand of estimated tax, to be determined after due enquiry under the provisions of the Taxation Act, or furnishing security therefor shall not be made a condition precedent for the release of the vehicle seized under Section 207 of the Act; in exceptional cases where there is reasonable apprehension that the vehicle will not be available for taking further action or the ultimate order passed in the light of the enquiry cannot be implemented on account of any special facts and circumstances, the competent Transport authority can withhold release or stipulate appropriate conditions for release other than payment of tax not yet determined; in such a case, reasons must be recorded in writing; and, if the competent authority refuses to release the vehicle within a reasonable time (within three days after the application is made in this behalf) or imposes onerous conditions, resort to the remedy under Article 226 of the Constitution of India is permissible. It is open to the petitioner to file an application to the second respondent seeking release of the vehicle and, if any such application is filed, the second respondent shall consider the petitioner's application in the light of the law declared by the Division Bench in **Saleem Tours**, and the learned Single Judge in **Shoukat Hussain**, and pass orders thereupon at the earliest in any event not later than three days from the date of receipt of a copy of the petitioner's application.

The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 31.12.2013
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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[\[1\]](#) 2012 (5) ALT 609

[\[2\]](#) 2000 (4) ALD 501 (DB)