

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WA.No. 22 of 2014 () IN WP(C).31262/2010  
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AGAINST THE JUDGMENT IN WP(C) 31262/2010 of HIGH COURT OF KERALA DATED 12-10-2010

APPELLANT(S)/PETITIONER:  
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VINOD V.T.  
S/O.A.K. THANKAPPAN, AGED 40 YEARS, VANDANATHARA HOUSE  
PUNNATHURA EAST P.O., KOTTAYAM DISTRICT.

BY ADVS.SRI.G.HARIHARAN  
SRI.PRAVEEN.H.

RESPONDENT(S)/RESPONDENTS:  
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1. THE DISTRICT COLLECTOR  
COLLECTORATE, KOTTAYAM - 686 002.
2. THE SUB INSPECTOR OF POLICE  
AYARKUNNAM POLICE STATION, AYARKUNNAM P.O.  
KOTTAYAM DISTRICT - 686 564.
3. THE GEOLOGIST,  
MINING AND GEOLOGY DISTRICT OFFICE, CIVIL STATION  
COLLECTORATE P.O., KOTTAYAM - 686 002.
4. THE DEPUTY COLLECTOR (LR)  
COLLECTORATE, KOTTAYAM - 686 002.

BY SR. GOVERNMENT PLEADER SRI. C.R. SYAMKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-01-2015, ALONG  
WITH WA. 1790/2013, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

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ANNEXURE - I TRUE COPY OF THE ORDER DATED 17.11.2011 ISSUED BY THE 1ST  
RESPONDENT IMPOSING A PENALTY OF RS.25,000/- ON THE APPELLANT.

ANNEXURE - II TRUE COPY OF THE ORDER DATED 16.11.2011 PASSED BY THE DISTRICT  
COLLECTOR, KOTTAYAM.

ANNEXURE - III TRUE COPY OF THE ORDER No.E.10(2).16539/10 DATED 28.01.2012 PASSED  
BY THE DISTRICT COLLECTOR.

ANNEXURE - IV TRUE COPY OF THE JUDGMENT MADE IN WP().33462/2011 DATED 10.2.2012

ANNEXURE - V TRUE COPY OF THE ANALYTICAL REPORT No.4442/T1/2011 DATED 01.07.2011  
ISSUED BY THE REGIONAL ANALYTICAL LABORATORY,  
THIRUVANANTHAPURAM.

ANNEXURE - VI TRUE COPY OF THE ANALYTICAL REPORT No.4439/T1/2011 DATED 23.8.2011  
ISSUED BY THE REGIONAL ANALYTICAL LABORATORY,  
THIRUVANANTHAPURAM.

ANNEXURE - VII TRUE COPY OF THE JUDGMENT MADE IN WP().10400/2012 DATED 31.10.2013

RESPONDENT(S)' EXHIBITS

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NIL

// TRUE COPY //

P.A. TO JUDGE

sou.

**ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.**

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W.A. No. 22 of 2014  
and  
W.A. No. 50 of 2014  
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Dated this the 29<sup>th</sup> day of January, 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

These two writ appeals filed by the same appellant have been heard together and disposed of by the common judgment.

2. Writ Appeal 50 of 2014 has been filed against the judgment dated 14.10.2010 passed in writ petition No.19008 of 2010. Writ appeal No.22 of 2014 has been filed against the judgment dated 12.10.2010 passed in writ petition No.31262 of 2010, which was filed by the appellant.

3. The brief facts giving rise to these two writ appeals are :  
The writ petition No.19008 of 2010 was filed by the petitioner challenging the order of the District Collector, Ext.P8 by which the Collector confiscated the vehicle of the petitioner bearing registration No.KL-5Y-4358, on the ground that the vehicle was found transporting the river sand and gave an option for deposit of Rs.4,50,000/-, which was with reference to the incident dated

26.10.2009. The writ petition was filed challenging the said order. In the first writ petition, the proceedings were initiated on the basis of the incident dated 26.10.2009 and the vehicle was seized. Learned Single Judge dismissed the writ petition observing that the permit Ext.P2 authorised transportation of ordinary sand and the lorry contained two different varieties of sand. One variety of sand was river sand. There was no fault in the proceedings.

4. Writ Petition No.31262 of 2010 was filed against the order of the Collector, Ext.P7 by which order the Collector on the basis of seizure of the above vehicle on 25.3.2010 passed an order for confiscation with an option for deposit of Rs.4,50,000/-. The order was challenged by the petitioner. The writ petition was dismissed by the learned Single Judge, noticing the report of the Geologist. The report was that sand is river sand. Learned Single Judge also observed that the report concludes the presence of river sand. Hence the sample was not sent for further analysis.

5. The petitioner had deposited the amount as directed by the Collector in the orders, Ext.P8 and P7 as noted above in both the writ petitions and the vehicle was released to him. Subsequently the petitioner made a request to the District Collector to sent both the samples, which were seized from the

petitioner's vehicle for chemical analysis by the Directorate of Mining and Geology. The Director submitted a report on 1.7.2011, which has been brought on record in both the writ petitions as Annexure -V and VI respectively. The said analytical report has identified the sand as ordinary sand ie., sand excavated from places other than stream.

6. Learned counsel for the appellant submits that in view of the chemical analysis of the sand, which was found as ordinary sand, the entire proceedings for confiscation falls to the ground. He further submits that though in the second case, there was one more reason for confiscation, that the undertaking was violated that was not sufficient for confiscating the vehicle.

7. Learned Government Pleader Sri. C.R. Syamkumar appearing for the State has submitted that proceedings taken including confiscation were on valid grounds. The petitioner has been transporting two categories of sand. No error was committed in confiscation and there was no error in so far as subsequent seizure of the vehicle is concerned. There was a clear undertaking by the petitioner, when the vehicle was released to him, that he shall not use the vehicle for transportation of the sand and he shall not use the vehicle in Kottayam Taluk. It was the second time the petitioner was found transporting the sand

and no error was committed by the Collector in confiscating the vehicle.

8. We have considered the submissions of the learned counsel for the parties and perused the record. There is no dispute that the chemical analysis of the sand was done by the Directorate of Mining and Geology at the instance of the District Collector, Kottayam and the report has been received on 1.7.2011. With regard to both the samples, the Director has now identified the sand as ordinary sand. Although learned Government Pleader has submitted that the District Collector has no jurisdiction to sent the sample for examination to Director, since the proceedings have been finalised and the fact that the sand has been sent for chemical analysis and report has been received, we are of the view that it is not necessary to enter into those issues.

9. In the facts of the present case, confiscation of the vehicle in writ petition No.31262 of 2010 is concerned, that was on the ground that the petitioner was found transporting river sand. Now it having been found to be ordinary sand, we are of the view that confiscation of the vehicle on the said ground cannot be sustained. In the above view of the matter, writ petition No.19008 of 2010 deserves to be allowed and the order

of the Collector dated 1.6.2010, Ext.P8 also deserves to be set aside.

10. In the result, Writ Appeal No.50 of 2014 is allowed. The judgment of learned Single Judge as well as the order of the Collector on 1.6.2010 are set aside. The petitioner shall be entitled for refund of the amount deposited in compliance of the said order. The said refund may be made to the petitioner within one month from the date of production of a copy of the judgment.

11. Now, coming to Writ Appeal No.22 of 2014, in the writ petition giving rise to the appeal, the challenge was against the order of the Collector on 10.6.2010. The Collector, in the said order indicates two circumstances for confiscating the vehicle. Firstly, the petitioner was transporting the river sand, whereas he has permission for transporting only ordinary sand. Secondly, the petitioner has violated the undertaking which he has given for release of the vehicle on the earlier occasion.

12. As noted above, on chemical analysis, the samples have been found to be ordinary sand. The main reason given by the Collector is unsustainable. However, in so far as the violation of the undertaking is concerned, there is no escape from the conclusion that the said undertaking is violated by the petitioner. What would be the appropriate order in the said context is to be

determined by the Collector himself, taking into consideration the facts and circumstances. In view of the aforesaid, we are of the view that the order dated 10.6.2010 can be set aside and the matter may be remitted to the Collector for passing fresh order with regard to seizure dated 25.3.2010.

In the result, Writ Appeal No.22 of 2014 is allowed. The judgment of learned Single Judge is set aside. The order of the District Collector dated 10.6.2010 is also set aside and the matter is remitted to the District Collector for passing fresh order with regard to seizure of the vehicle held on 25.3.2010. The District Collector shall take appropriate decision within a period of two months from the date of production of a copy of this judgment.

Sd/-  
**ASHOK BHUSHAN,  
ACTING CHIEF JUSTICE**

Sd/-  
**A.M.SHAFFIQUE,  
JUDGE.**

SOU.