

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 2915 of 2015 (L)

PETITIONER :

**SADHIKH M., AGED 27 YEARS,S/O.HASSAN,
MAVARA HOUSE, SOUTH VAVANNUR P.O.,
KOOTTANADU VIA, PALAKKAD DISTRICT,
(REGISTERED OWNER OF KL-17-A-6116).**

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS:-

- 1. THE SUB DIVISIONAL MAGISTRATE/REVENUE DIVISIONAL OFFICER,
OFFICE OF RDO, OTTAPPALAM, P.O. OTTAPPALAM,
PALAKKAD - 679 101.**
- 2. DEPUTY TAHSILDAR (INSPECTION),
TALUK OFFICE, OTTAPPALAM, P.O. OTTAPPALAM,
PALAKKAD DISTRICT - 679 101.**
- 3. THRITHALA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, PANCHAYATH OFFICE,
THRITHALA P.O., PALAKKAD DISTRICT - 679 534.**

R1 & R2 BY SR GOVERNMENT PLEADER SRI.MUHAMMED SHAFI.M.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 2915 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF REGISTRATION CERTIFICATE OF THE VEHICLE
KL-17-A-6116 DATED 06.04.2004.**
- EXHIBIT P2. TRUE COPY OF THE SAND PASS DATED 08.01.2015 ISSUED BY THE
3RD RESPONDENT.**
- EXHIBIT P3. TRUE COPY OF SEIZURE MAHAZAR ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER DATED 08.01.15.**
- EXHIBIT P4. TRUE COPY OF THE ORIGINAL SAND PASSES WITH
BOOKING DATED 28.11.2014 ISSUED BY THE 3RD RESPONDENT TO
THE PETITIONER'S VEHICLE.**
- EXHIBIT P5. ORIGINAL CERTIFICATE DATED 31/1/2015 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

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P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.2915 OF 2015
.....

Dated this the 5th February, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing No.**KL.17A-6116** as evident from Ext.P1 certificate of registration. On 08.01.2015, river sand was carried in the said vehicle on the strength of Ext.P2 pass issued by the third respondent/Thrithala Panchayat. But at the place of destination, the vehicle was intercepted by the second respondent/Deputy Tahsildar as per Ext.P3 Mahazar alleging illegal transportation of river sand.

2. In the course of further proceedings, the petitioner has produced an additional document as Ext.P5, which is a certificate dated 31.01.2015 issued by the local authority, as to the circumstances, under which the route diversion was sought to be effected.

3. Heard the learned Counsel for the petitioner as well as the learned Government Pleader.

4. The insinuation made against the petitioner as evident from Ex.P3 is that no route was mentioned in the particular pass

and further that the date of the pass was shown as 07.01.2015 in Ext.P4, whereas the transportation was effected on 08.01.2015. It is stated that some excess quantity was also there.

5. The learned Counsel for the petitioner submits that the case of excess quantity is not correct and that the petitioner has made necessary application, which was considered and pass was issued to the requisite extent. The excess weight felt by the concerned respondent might be due to the fact that it was containing much water content as well. Even otherwise, that cannot constitute an offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act. With regard to non-mentioning of the route in the pass, the position stands certified by the concerned authority vide Ext.P5 and that there is no discrepancy with regard to the place from where the seizure was effected or as to the course and events in this regard. The crucial question is with regard to the discrepancy in the date in so far as the date of issuance of pass was shown as 07.01.2015 on Ext.P4(1), whereas the seizure was effected on the next date, i.e. on 08.01.2015.

6. The learned Counsel for the petitioner submits that

Ext.P4(1) pass was actually issued on 23.12.2014. But on that date because of the difficulty expressed from the part of the customer, the sand could not be transported and it was sought to be corrected accordingly. Necessary endorsement was effected by the competent authority by changing the date of pass from 23.12.2014 to **'08.01.2015'** and the same has been countersigned as well. But since the date came to be shown as **07.01.2015** by the concerned watchman, who had affixed cello-tape over the relevant entries, the same could not be corrected.

7. After hearing both the sides, this Court finds that the version put-forth by the petitioner appears to be more probable and if so, no offence may be involved. But it is a matter to be looked into by the competent authority. But for that matter, the vehicle need not be detained. In the said circumstance there will be a direction to release the vehicle forthwith, on execution of a simple bond. The proceedings before the first respondent however have to be taken to a logical conclusion by issuing notice to the petitioner and considering whether any offence is made out by the petitioner in carrying river sand on the strength of pass issued by the concerned authority. The proceedings, as

above, shall be finalised at the earliest, at any rate within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the second respondent/Dy.Tahsildar for further steps.

P.R.RAMACHANDRA MENON
JUDGE

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