

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 25638 of 2009 (Y)

PETITIONER :

**NOUSHAD M.,
S/O.MUHAMMED
MULANJIPULAN HOUSE,
INDIANOOR P.O.,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.E.S.M..KABEER
SRI.ABDUL MAJEED N.**

RESPONDENT(S) :

**1. THE DISTRICT COLLECTOR
MALAPPURAM.**

**2. THE TAHSILDAR,
TALUK OFFICE, TIRUR.**

R1 & R2 BY GOVT. PLEADER SRI. P.V. ELIAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

**EXT.P1 : COPY OF THE SAND PASS ISSUED BY THE SECRETARY,
TRIPRANGODU GRAMA PANCHAYATH.**

**EXT.P2 COPY OF THE MAHAZAR PREPARED BY THE 2ND RESPONDENT
DATED 27/4/09.**

**EXT.P3 COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED
5/6/09.**

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

C.K. ABDUL REHIM, J.

W.P.(c) No. 25638 OF 2009-Y

DATED THIS THE 22nd DAY OF JANUARY, 2015.

J U D G M E N T

Challenge in this writ petition is against Ext.P3 order passed by the 1st respondent in exercise of power vested under Section 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, read with Rule 27 (3) of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 (herein after referred to as the Act and the Rules respectively, for short).

2. A Mini Lorry bearing registration No. KL 10-L-3944 belonging to the petitioner was seized by the 2nd respondent on 27-04-2009 at about 4.15 p.m. at a place called 'Beeranchira' in Triprangode Grama Panchayat, alleging that 'River Sand' was transported in the said vehicle in violation of provisions contained in the Act and the Rules. The 2nd respondent prepared a seizure mahazer, copy of which was forwarded to the 1st respondent for

further action. Pursuant to the same the 1st respondent initiated proceedings under Section 23 of the Act read with Rule 27 (3). The petitioner was afforded with an opportunity of personal hearing. It was contended by the petitioner that the sand in question was transported on the strength of a pass issued from the Grama Panchayat and therefore the transportation was not in violation of the provisions of the Act and Rules. Considering the seizure mahazer the 1st respondent found that, in the pass available at the time of seizure the departure time from the 'Kadavu' was seen noted as 2.55 p.m. whereas the 2nd respondent had seized the vehicle at 4.15 p.m. at a spot which is only at a distance of 300 Meters from the 'Kadavu'. Therefore it is noticed that the seizure was after 1 Hour and 20 Minutes after the time noted in the pass, at a distance which can be covered within 10 minutes. Hence it is inferred that the sand in question was only a different load transported under the guise of pass issued with respect to another load. Finding that the vehicle was used for illegal transport of sand in violation of

the provisions contained in the Act and the Rules, it was held to be liable to be confiscated. Invoking powers under Rule 27 (3) it was decided to release the vehicle on realising an amount equal to value of the vehicle. The 1st respondent fixed the value of the vehicle at Rs.1,35,000/-, it being a 'Mahindra-Nissan' Mini Lorry of 2001 model. The petitioner was requested to remit the said amount within a period of one month.

3. When the above writ petition came up for admission this court passed an interim order on 14-09-2009 directing release of the vehicle to the petitioner on his depositing a sum of Rs.35,000/- and on executing a Bond for the balance amount of Rs.1,00,000/-. Learned counsel for the petitioner conceded that the vehicle was already released to the petitioner in view of the interim order.

4. Contention of the petitioner is that the findings contained in the impugned order is arrived only on a presumption that the petitioner was transporting another load of sand under the guise of the pass issued. According

the petitioner, the transportation was delayed only because it was the last load transported from the 'Kadavu' in question and that the Driver and Cleaner of the vehicle were taking bath, after loading the sand. But such a contention was not seen raised before the 1st respondent. More over it is pertinent to note that the 1st respondent had noticed discrepancy in the name of the Driver mentioned in the pass with the name of the Driver who was in-charge of the vehicle at the time of seizure. At any rate, the dispute now raised by the petitioner with respect to the factual findings arrived by the 1st respondent cannot be adjudicated by this court, in this writ petition filed under Article 226.

5. Under the above mentioned circumstances, this court do not find any reason to hold that the reasonings based on which the 1st respondent had arrived at a conclusion regarding the illegal transportation, is in any manner irregular, improper or unsustainable. Hence contentions raised in challenge of the impugned order cannot be accepted.

6. It is noticed that the 1st respondent had fixed value of the value of the vehicle at Rs.1,35,000/-, without there being any basis for such fixation. The impugned order does not reflect anything to the effect that the 1st respondent had obtained valuation report from any expert agency or authority. Considering the fact that the vehicle is of 2001 model and that the confiscation was ordered in the year 2009, this court is of the opinion that the value fixed at Rs.1,35,000/- is prima facie excessive. But it will not be possible for this court to direct a valuation by any expert agency or authority at this point of time, in the year 2015. The value which need to be imposed on confiscation of the vehicle is the value which existed as in the year 2009.

7. Under such circumstances, considering equity and good conscience this court is inclined to grant relief to the extent of reducing value of the vehicle fixed under Rule 27 (3). On a reasonable estimation this court feels that fixation of value at Rs.1,00,000/- would be reasonable.

8. Therefore while declining challenges raised in this writ petition, Ext.P2 order is modified to the extent of re-fixing value of the vehicle in question at Rs.1,00,000/-. Considering the fact that the petitioner had already remitted a sum of Rs.35,000- at the time of release of the vehicle, it is ordered that the vehicle shall not be taken into custody in execution of Ext.P2 order, if the petitioner remits a further sum of Rs.65,000/- within a period of one month from today.

The writ petition is disposed of accordingly.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge