

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.8711 to 8713 of 2015

C.Ramasamy ...Petitioner in W.P.No.8711/2015

R.P.Murugesan ...Petitioner in W.P.No.8712/2015

V.Elangovan ...Petitioner in W.P.No.8713/2015

Vs.

The District Collector,
Ariyalur District,
Ariyalur. ...Respondent in all the petitions

PRAYER IN ALL WPs: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records relating to the impugned order in Na.Ka.No.29/Pu(ma) Su/2015, dated 05.03.2015 issued by the respondent herein and quash the same as unjust, arbitrary and illegal.

In All Writ Petitions
For Petitioners : Mr.J.Thilagaraj

For Respondent : Mr.T.N.Rajagopalan, Spl.G.P.

सत्यमेव जयते

COMMON ORDER

As the facts leading to all the writ petitions are one and the same, they are disposed of by this common order.

2. For better appreciation, facts involved in one of the writ petitions i.e. W.P.No.8711 of 2015, are stated below:

It is the claim of the petitioner that while his vehicle bearing Registration No.TN-46-M-8496 was engaged for transportation of 25 tons of limestone from Karikalli Village, Vedasandur Taluk in Dindigul District, to the factory of Chettinad Cement Corporation at Keelpalur village in Ariyalur District, on 04.01.2015, the said vehicle was seized by the Tahsildar, Ariyaluar, on the ground that the said vehicle was transported beyond the time limit mentioned in the despatch slip i.e. a delay of 2 ½ hrs. in reaching the designation.

3. Therefore, it is the grievance of the petitioners that, as per the despatch slip, the departure time was 13.00 hrs. from the mines and the expected time of reaching the destination was 21.00 hrs. on 04.01.2015. It is further submitted that the said trucks had to move only at a low speed, as they are multi-axled truck and laden with 25 tons of limestone. Moreover, the said trucks were forced to be driven slowly due to heavy traffic on the road and school closing time while passing through Trichy town. It is further submitted that on the way to destination place, their vehicles' tyre got punctured, therefore, it had to be stopped and that it is being multi-axled vehicle, it needed to be repaired with an expert, therefore, an expert for vulcanising the tyre from Trichy was called for and thereafter, the same was got it repaired and thus, it resulted for delay of 2 ½ hrs. With these submissions, he further contended that the impugned proceedings passed by the respondent levying a fine of Rs.5,00,000/- merely on the ground of 2 ½ hrs. delay under Section 21 of the mines and Minerals (Regulation and Development) Act, 1957 (in short "Act"), is highly arbitrary, illegal and without any jurisdiction, particularly, when there is no violation of any provision.

4. It is further contended that, even as per Section 21 of the Act, a fine amount of Rs.25,000/- only can be imposed if there is any violation, however, the respondent, taking note of the subsequent amendment made in the said Act, which came into effect only from 12.01.2015, without authority, has wrongly imposed a fine of Rs.5,00,000/- for the occurrence that had happened only on 04.01.2015. With these submissions, he sought for setting aside the impugned order passed by the respondent.

5. Per contra, learned Special Government Pleader appearing for the respondent submitted that the Revenue Officials, on checking the vehicles to curtail the illegal transport, had checked the petitioner's truck bearing Registration No.TN-46-M-8496 carrying Limestone on 04.01.2015. Subsequently, they had also checked two

more lorries bearing Registration Nos.TN-76-M-8577 and TN-46-M-8587. During verification of the despatch slip of the said lorries, the Tahsildar, Ariyalur, finding that the said lorries had transported limestone beyond the time limit, seized the same. Curiously, the drivers of the said trucks had run away from the spot, however, on the next day, namely, 05.01.2015, the said truck drivers had shown despatch slip. Even on a perusal of the despatch slip indicates that the said trucks had transported limestone beyond the time limit mentioned in the despatch, therefore, the Tahsildar had seized all three trucks. Thereafter, the said Tahsildar has submitted his report to the Sub-Collector, Ariyalur, who, in turn, reported the same to the District Collector, Ariyalur. Finally, the District Collector, Ariyalur, has imposed a penalty of Rs.5,00,000/- to the vehicle as per Section 21 of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015. Therefore, he pleaded, the contention of the petitioners that the respondent has passed the impugned order without any proper application of mind, cannot be countenanced by this Court.

6. It is finally contended that if the petitioners aggrieved by the impugned order, they can very well file their application before the Central Government as per Rule 54 of the Mineral Concession Rules, 1960. Without resorting to such remedy, they cannot file a writ petition before this Court seeking to quash the impugned order passed by the respondent. With these submissions, he sought for dismissal of the writ petitions.

7. Heard both sides.

8. It is an admitted fact that, on 04.01.2015, the petitioners have engaged their respective trucks for transportation of 25 tons of limestone from the mines of Karikkali Village, Veda sandur Taluk, Dindigul District, to the Chettinad Cement factory, situated at Keelpalur Village, Ariyaluar District. As per the despatch slip, the departure time was 13.00 hrs. from the mines and the expected time of reaching the destination was 21.00 hrs. on 04.01.2015. But, unfortunately, it appears that the petitioners' vehicle reached the destination place with a delay of 2 ½ hrs. The explanation offered by the petitioners shows that the said trucks, being a multi-axled truck and laden with 25 tons of limestone, had to move only at a slow speed and on the said day, there was heavy traffic on the way due to school closing time near Trichy town. It is further stated that since the truck got punctured, it had to be rectified with an expert, therefore, they had to bring professional vulcanizers from Trichy Town to rectify the same and this has

resulted in natural delay of 2 ½ hrs. in reaching the destination.

9. Paragraph 6 of the counter affidavit filed by the respondent shows that the Tahsildar, Ariyalur, while inspecting the said trucks on 04.01.2015, appears to have perused the despatch slip and on perusal, he has come to the conclusion that the said trucks in question reached the destination place with a delay of 2 ½ hrs. Only on this count of delay of 2 ½ hrs., the respondent passed the impugned order imposing a fine of Rs.5,00,000/-, which, in my view, cannot be sustained, as the delay is prone to happen while transporting heavy load of goods due to some unforeseen circumstances mentioned supra. That apart, the said provision does not empower the District Collector to impose such a heavy fine for delay.

10. In this context, let me examine whether the impugned proceedings dated 05.03.2015 levying a fine of Rs.5 lakhs merely on the ground of delay of 2 ½ hrs. in reaching the place of destination while transporting the limestone by the petitioners' vehicle are valid or not? In that regard, it is necessary to extract Section 21 (1) of the Act, which reads as under:

21. Penalties --- [(1)Whoever contravenes the provisions of sub - section (1) or sub - section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty - five thousand rupees, or with both.]

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub - section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the

help of the police to evict the trespasser from the land.

[(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub - section(4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub - section (1) and shall be disposed of in accordance with the directions of such court.]]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub - section (1) shall be cognizable.

A mere reading of the above provision clearly shows that any person transporting any mineral from any land without any lawful authority shall be liable to be seized by an officer or authority specifically empowered in this behalf. Again, Sub-clause 4-A shows that any mineral seized under sub-section(4) shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence. In the present case, the petitioners have charged with a violation of transporting mineral without lawful authority. Indeed, the despatch slip shows that the petitioners have got permission to transport mineral, namely, limestone. Therefore, the above provision could not have been invoked. A mere reading of the impugned order shows that the delay of 2 ½ hrs. in reaching the destination place by the vehicle has warranted imposition of Rs.5 lakhs. The delay in reaching the destination has not been contemplated as an offence.

That apart, neither by way of counter affidavit nor in the course of argument, the respondent has brought to the notice of this Court any provision for imposition of such fine amount for delay of the vehicle in reaching the destination. Therefore, on this count, the impugned order is liable to be set aside.

11. Above all, after reading the above provision, it is clear that the District Collector can impose a fine amount of Rs.25,000/- only, when there is a movement of mineral without any authority or permission. In this scenario, another question needs to be answered is, whether the petitioners' vehicle can still be levied with a fine of Rs.25,000/- by the District Collector for the delay. To find out answer for this, it has to be seen whether there is any provision empowering the District Collector to impose any fine amount for mere delay in reaching the destination. Admittedly, the despatch slip shows that starting time is 13.00 Hours on 04.01.2015 and reaching time is 21.00 Hours on 04.01.2015. It is not in dispute that the Tahsildar, Ariyalur, while inspecting the vehicle on 04.01.2015, noted the delay of 2 ½ hrs. in reaching the destination. On recommendation of the said Tahsildar, the District Collector imposed a penalty of Rs.5 lakhs as per Section 21 of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015. Counter affidavit filed by the respondent does not throw light as to under which provision the District Collector imposed a fine of Rs.5 lakhs for mere delay in reaching the destination place. Moreover, the proceedings of the District Collector do not speak under which provision he has imposed such a huge fine. As a matter of fact, the petitioners have submitted detailed explanation for the delay of 2 ½ hrs. as stated supra, therefore, in all fairness, the District Collector, could have accepted the said explanation instead of imposing a heavy fine of Rs.5 lakhs. That apart, when the vehicle was seized on 04.01.2015 for the alleged violation of delay in reaching the destination, unless there is a provision as on 04.01.2015, which has not been produced before this Court, the respondent cannot impose such a huge fine by applying the subsequent ordinance with retrospective effect, which came into force with effect from 12.01.2015.

12. Further, it may be mentioned that the District Collector, while passing the impugned order, would have taken into account one another aspect that the commercial vehicles seized on 04.01.2015 were detained for about four months, that itself would be a sufficient penalty, inasmuch as the petitioners deprived of carrying on their business to gain income and profits for such months.

13. Thus, for all the reasons stated supra, the writ petitions stand allowed by setting aside the impugned order passed by the respondent. Consequently, the respondent is directed to release the said trucks on production of a copy of this order forthwith. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,
Ariyalur District,
Ariyalur.

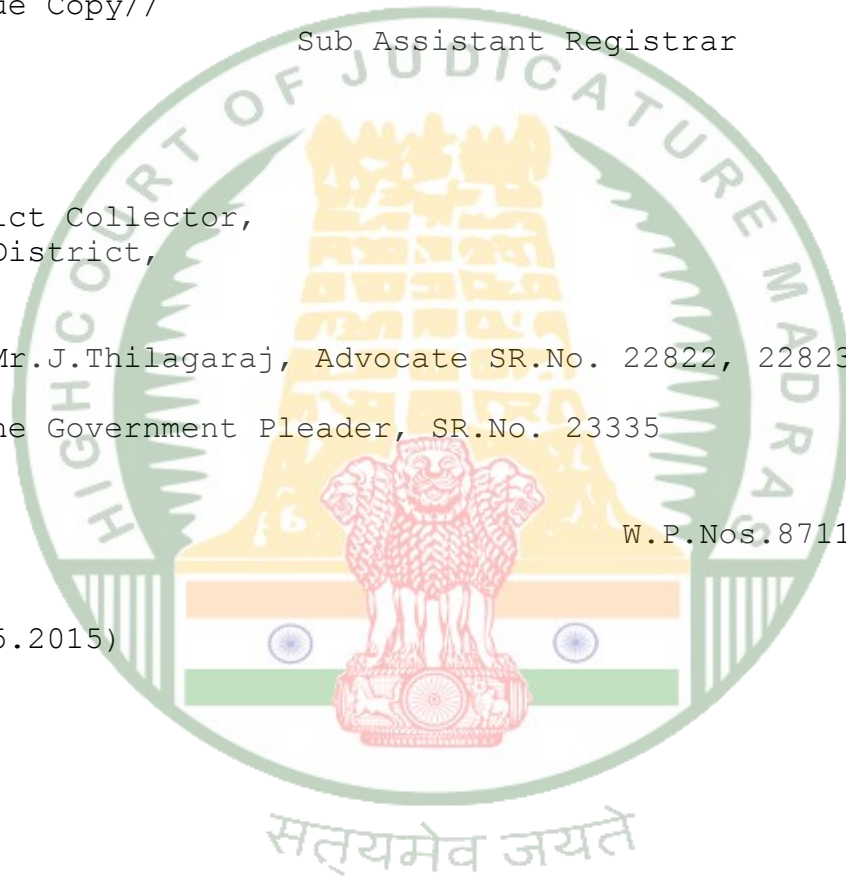
6 CCs to Mr.J.Thilagaraj, Advocate SR.No. 22822, 22823 & 22827

1 CC to the Government Pleader, SR.No. 23335

W.P.Nos.8711 to 8713 of 2015

VD (CO)

PSI (08.05.2015)



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