THE HON'BLE SRI JUSTICE A.V. SESHA SAI

Writ Petition No.17237 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

> "to issue a writ, order or direction particularly one in the nature of a Writ of Mandamus, declaring the seizure of the petitioner's vehicle bearing No. AP 04T 7788 seized under vehicle check report No.1557450 dated 29.05.2015 by the 3rd respondent as illegal, arbitrary, unjust and contrary to law and consequently direct the respondents to release the vehicle of the petitioner forthwith and pass such other order or orders as this Hon'ble Court may be deem fit and proper in the circumstances of the case."

Heard Sri B. Siva Rama Krishnaiah, learned counsel for the petitioner and the learned Government Pleader for Transport appearing for the respondents 1 to 3.

The petitioner is the owner of the vehicle bearing No.AP-04T-7788. The Motor Vehicles Inspector, Regional Transport Authority, Medchal, Ranga Reddy District, the third respondent herein, seized the same on 29.05.2015 vide check report No.1557450 on the following three grounds:

i) Plying without tax on 30.06.2015 with marriage party.

ii) Plying without driving licence (Driver D.L. not produced).

iii) Without I.C.

The petitioner herein submitted an application before the second respondent under Section 207 (1) of Motor Vehicles Act (for short 'the Act') read with Rule 448 (b) Motor Vehicles Rules and under Section 8 of the Telangana Motor Vehicles Taxation Act requesting for release of the vehicle while expressing his willingness to pay the tax for the present quarter ending 30.06.2015. The second respondent issued a show cause notice dated 08.06.2015 directing the petitioner to pay tax and penalty of Rs.4,42,090/- along with compounding fee for the offences noticed in the check report for taking necessary action to release the vehicle. Aggrieved by the said action, the present writ petition is filed.

It is the contention of the learned counsel for the petitioner that the said action on the part of the respondents is in violation of the orders of this Court in ***Saleem Tours and Travels v. Joint Transport Commissioner and Secretary, RTA, Hyderabad and another*** [1]. In the said decision, this Court laid down the following guidelines:

(1) A vehicle plying in breach of conditions of permit as regards the purpose of usage of the vehicle can be seized under Section 207 of the Motor Vehicles Act, but not under Section 8 of A.P. M.V. Taxation Act, but, the mere fact that the latter provision is also quoted does not vitiate seizure.

(2) The vehicle so seized cannot be detained until the completion of enquiry under the Taxation Act and the payment of tax if any pursuant to the demand raised.

(3) The vehicle seized under Section 207 on the ground of contravention of conditions of permit should not be detained for unduly long time and on 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 the production of vehicle in connection with the enquiry unless there are exceptional circumstances which make the release of the 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. Incidentally, it may be mentioned that this Court while directing release of vehicles, has been directing deposit ranging between Rs.2,000/- to Rs.5,000/-.

(4) The demand of estimated tax to be determined after due enquiry under the provisions of the Taxation Act or furnishing security therefore shall not be made a condition precedent for the release of the vehicle seized under Section 207 of the MV Act.

(5) 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 the release or stipulate any appropriate conditions for release other than the payment of tax not yet determined. In such a case, it is expected of them that the reasons are recorded in writing.

(6) If the competent authority refuses to release the vehicle within a reasonable time, say within three days, after the application is made in this behalf, or imposes onerous conditions, resort to remedy under Article 226 is open to the aggrieved person. The Court may direct release of the vehicle on such conditions as may be deemed appropriate viz., deposit of certain amount in order to secure the production of vehicle in connection with the enquiry or prosecution, prohibiting the transfer of the vehicle etc. If any amount is deposited pursuant to the order of the Court, the same is liable to be adjusted ultimately against the compounding fee or the tax payable.

The Motor Vehicles Act and the Rules made thereunder prescribes the procedure for determination of lapses, if any, committed by the owners of the vehicle and the consequences that flow from such determination.

That question as to whether the lapse pointed out in the vehicle check report is true or not needs to be decided in the proceedings that may be initiated in accordance with the relevant provisions of law. Continued detention and seizure of the vehicle does not advance the purpose or interest of the respondents.
On the other hand, it would expose to theft of parts and damage. The interest of the respondents can be protected by directing that the vehicle of the petitioner be released subject to certain conditions.

For the aforesaid reasons and having regard to the principles laid down in the above referred judgment, the writ petition is disposed of directing that the respondents shall release the vehicle bearing No. AP T04 4778 to the petitioner, on his paying a sum of Rs.40,000/-

(Rupees Forty Thousand only). The petitioner shall also file an undertaking to the effect that he shall produce the vehicle as and when necessary and that he shall not alienate the same in the meanwhile. This order, however, does not preclude the respondent authorities from initiating proceedings in accordance with law for recovery of tax, if any, due from the petitioner.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

A.V. SESHA SAI, J

Date: 17.06.2015
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[1] 2000 (4) ALD 501 (DB)