

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.38467 of 2014

ORDER

Heard the counsel for the petitioner, Government Pleader for Panchayat Raj for respondent No.1, Government Pleader for Mines and Geology for respondent Nos.2 and 3, Government Pleader for Home for respondent No.4 and Government Pleader for Revenue for respondent No.5.

2. The grievance of the petitioner in this writ petition is that the 4th respondent has seized the petitioner's vehicle viz., lorry bearing Registration No.AP 07TW 4568, without following any procedure and that the said seizure is illegal and arbitrary.

3. It is not disputed that the seizure of vehicles for illegally transporting sand was previously governed by G.O.Ms.No.186 Industries and Commerce (Mines-I) Department dated 17.12.2013, but the said G.O. is now superceded and substituted by G.O.Ms.No. 95 Industries and Commerce (Mines-IV) Department dated 28.8.2014.

4. The new Rules provide for a penalty for the first and second offences, and thereafter, discretion is conferred on the authorized Officer to confiscate the vehicle involved in illegal extraction and transportation of sand. The Rules also contemplate that any officer, who seized any vehicle, may release the same on the execution a bond by the owner thereof for the production of the vehicle so released, as and when directed by the competent court. Rule 18 of the said Rules contains these provisions and the same is extracted hereunder:

"18 Offences:

(i) Where vehicles without valid way bill has been used the transportation of sand in contravention to these rules:

(a) If any vehicle is found to be involved for illegal extraction and transportation of sand under these rules shall be levied penalty for each vehicle as detailed below:-

Vehicle Type	First time offender fine amount (in Rs.)	Second time offender fine amount (in Rs.)
Tractor	15,000	45,000
Lorry upto 10 Tons Capacity	45,000	75,000
Lorry above 10 Tons Capacity	75,000	1,50,000

(b) If the vehicle is found to be involved more than two times, such vehicle along with sand shall be confiscated by any officer authorized by the Government through notification from time to time.

(ii) Every officer seizing any vehicle under said sub-rule (1) shall place on such vehicle, a mark indicating that the same has been seized and shall submit a report of such seizure to the Competent Court of Law.

(iii) An authorized officer who seizes any vehicle shall order confiscation of the vehicle so seized.

(iv) No order of confiscation of any vehicle shall be made under sub-rule

(v) Unless the person from whom the vehicle is seized is given:-

(a) A notice in writing informing the person of the grounds on which it is proposed to confiscate such property.

(b) An opportunity of making a representation in writing within such time as may be specified in the notice against the grounds for confiscation; and

(c) A reasonable opportunity of being heard in the matter.

- (vi) Without prejudice to the provisions of sub-rule (4), no order of confiscation under sub-rule (3), of any machinery/vehicle shall be made if the owner of the vehicle thereof proves to the satisfaction of the authorized officer that it was used in carrying the operations without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use. Provided that no order prejudicial to any person shall be passed without being offered an opportunity of being heard.
- (vii) Any officer who seized any vehicle under Sub-rule (1) (iii) and where he makes a report of such seizure to the competent court under sub rule (2) may release the same on the execution a bond by the owner thereof for the production of the vehicle so released, as and when directed by the competent court.
- (viii) The vehicle seized under this rule shall be kept in the custody of the Station House Officer/Motor Vehicle Inspector concerned until an order of the Competent Court of Law directing its disposal is received.
- (ix) Upon the receipt of any report under sub-rule (2), the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the vehicle according to law.”

5. Having regard to the above provision, the petitioner is directed to submit a representation to the officer who seized the vehicle for its release; the said officer shall within three days from the date of receipt of the representation examine whether the vehicle was used in committing the offence for the first or the second time; and, if so, consider directing release of the vehicle on payment of the prescribed penalty. If, on the other hand, the vehicle is found to have been used in the commission of the offence for three or more

times, the officer concerned shall consider directing the release of the vehicle, in accordance with Rule 18(vii), on a bond being executed by the owner of the vehicle for its production as and when directed by the competent Court to which such seizure was reported by the Officer who seized the vehicle.

6. The entire exercise, culminating in an order being passed, shall be completed within three days from the date of submission of the representation by the petitioner; and necessary action shall be taken for release of the vehicle, in cases falling within the ambit of Rule 18(i)(a), on payment of the prescribed penalty; and, in other cases, on a bond being executed in terms of Rule 18(vii) of the Rules.

7. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 16-12-2014

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