

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1177 OF 2015

ORDER:

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Challenging the action of the 2nd respondent in seizing his vehicles viz., Lorries bearing Nos. MH 25B 9713 and MP 09HF 6267, vide proceedings dated 22.01.2015 and detaining them in the open premises of the 3rd respondent, the petitioner filed this writ petition seeking a direction to respondents 2 and 3 to release the vehicles.

2. The case of the petitioner, in brief, is that his two vehicles, stated supra, were registered in the State of Karnataka. His village is at a distance of 1 Km from the State of Telangana, as such his vehicles ply in both the States and he is regular in payment of applicable taxes. On 21.01.2015, for the purpose of construction of his aunt's house at Kanti, he instructed his drivers to purchase the sand sold by the Government at Setlur. It is stated that his drivers, without his knowledge, apparently loaded the sand and, while transporting the same, the 2nd respondent seized the vehicles, vide proceedings dated 22.01.2015, on the ground that the vehicles were found to be illegally transporting the sand from Sirsamunder Manjeera River, in contravention of Rule 13 of the Telangana State Sand Mining Rules, 2015 (for short, 'the Rules') and G.O.Ms.No.3 Industries and Commerce (Mines) Department No.1 dated 08.01.2015, and the vehicles were plying without valid way-bills issued by the Telangana State Mineral and Development Corporation or by the pattadar and kept the said vehicles in the premises of the 3rd respondent along with the sand. Aggrieved by the action of the 2nd respondent in seizing his vehicles and detaining them in the open premises of the 3rd respondent, without unloading the sand and without releasing the vehicles to the petitioner, the present writ petition is filed.

3. This Court, on 28.01.2015, while granting time to the learned

Assistant Government Pleader for Mines and Geology to get instructions, directed the respondents to take appropriate steps for unloading the sand from the seized vehicles.

4. Today, at the hearing, the learned Assistant Government Pleader submits that though the petitioner was issued a show cause notice on 27.01.2015 asking him to show cause as to why his vehicles should not be confiscated along with the sand, the petitioner did not choose to file his reply till today. He further submits that the remedy of the petitioner is to file an application under Section 451 of Cr.P.C., before the Criminal Court seeking release of his vehicles, and seeking relief of release of vehicles by way of filing a writ petition is misconceived.

5. Per contra, learned counsel for the petitioner submits that the impugned proceedings, seizing the vehicles, are illegal and prays for a direction to the respondents to release the vehicles. He further submits that inspite of the orders of this Court dated 28.01.2015 to unload the sand, the sand is not unloaded till date. However, the Assistant Government Pleader states that the order of this Court has been complied with.

6. A perusal of Rule 13 of the Rules would show that the respondents are authorised to seize the vehicle and the sand when the same is transported in violation of sub-rule 1 of Rule 13 (3) of the Rules. As per Rule 13(3), *“An authorised officer to seize any vehicle as per Sub-Rule (1) shall keep the vehicle with Station House Officer concerned or Tahsildar concerned for safe custody and shall submit a report of such seizure to the Competent Court of law.*

7. Further as per Rule 13(4) of the Rules, *“An authorised officer who seizes any vehicle shall order confiscation of the vehicle so seized.*

As per Rule 13(5) of the Rules –

“No order of confiscation of any vehicle shall be made under sub rule (4) 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 with 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.*

8. It is not in dispute that respondents 2 and 3 seized the vehicles under Rule 13(1) of the Rules. But as per sub-rule (1) of Rule 13(3), a report of such seizure should be submitted to the Competent Court of law. But, in this case, though the vehicles were seized by proceedings dated 22.01.2015, till date the vehicles are not produced before the Competent Court of law. In the absence of production of the seized vehicles before the competent Court along with a seizure report, the question of preferring an application under Section 451 of Cr.P.C., by the petitioner seeking release of his seized vehicles does not arise.

9. A perusal of the Rules would show that, pending confiscation proceedings, the Rules do not provide for a procedure for release of seized vehicles. Further, when a show cause notice was issued on 27.01.2015, the petitioner should have submitted his explanation, along with an application to the concerned authority for release of his vehicles, instead he straightaway approached this Court, by way of this writ petition.

10. The action of the respondent authorities in keeping the matter pending, even after seizure of the vehicles in question, without following the procedure contemplated under sub-rule (1) of Rule 13(3) of the Rules, deprives the petitioner of his right seeking to release his vehicles from the competent Court. Hence, I deem it appropriate to dispose of the writ petition, by directing the respondent authorities/concerned Officer, either to immediately take steps in compliance of sub-rule (1) of Rule 13(3) by preparing seizure report and produce the vehicles before Competent Court to enable the

petitioner to file an application under Section 451 Cr.P.C., for release of his vehicles, whereupon the competent Court shall pass orders in accordance with law; or, in the alternative, the petitioner is permitted to submit his explanation to the show cause notice, along with an application to the concerned Officer seeking release of his vehicles. Upon receipt of explanation for the show cause notice and the application for release of vehicles, the Officer concerned shall consider the application of the petitioner and pass appropriate orders, in accordance with law, within a period of two weeks therefrom, by seeking sufficient security and imposing condition of production of vehicles as and when required.

11. With the above observations, the writ petition is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 02.02.2015

Note: Issue C.C.in 2 days

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