**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**WRIT PETITION NOS.13257, 13366, 13427, 13473, 15434, 15435, 15444, 15445, 15446, 15447, 15448, 15895, 23505, 24670, 24672, 25005, 25861, 25862, 25865, 28335, 28336, 30047**
**AND**
**32711 OF 2012**

**W.P.NO.13257 OF 2012**:

Between

R. Biksham and others … Petitioners

and

The District Collector, Mahabubnagar,
and others … Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 15th SEPTEMBER,2015

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals — Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? — Yes/No

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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**32711 OF 2012**

**% DATED 15TH SEPTEMBER, 2015**

**W.P.No.13257 of 2012:**

Between:

# R. Biksham and others .. Petitioners .. Petitioner

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<Gist:

>Head Note:

! Counsel for petitioners in W.P.Nos. 13257, 13366, 13427, 13473, 15895, 23505, 24670, 24672, 25005, 25861, 25862, 25865, 28335, 28336, 30047 and 32711 of 2012 : Sri Ch. Ravinder

! Counsel for petitioners in W.P.Nos.
15434, 15435, 15444, 15445, 15446,
15447 and 15448 of 2012 : Sri T. Venkat Reddy

^Counsel for respondents in this
batch of cases : Govt. Pleader for Revenue

? CASES REFERRED:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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**WRIT PETITION NOS.13257, 13366, 13427, 13473,**
**15434, 15435, 15444, 15445, 15446, 15447,**
**15448, 15895, 23505, 24670, 24672,**
**25005, 25861, 25862, 25865,**
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**C O M M O N O R D E R**

The petitioners in this batch of cases share the same grievance. All the writ petitions are therefore amenable to disposal by this common order.

The complaint of the petitioners was that the goods vehicles in which they were transporting sand were seized and they were directed to pay penalty. In some cases, such penalty was levied as a measure of compounding an offence while in others, it was imposed as a penalty *per se*. The imposition of penalties in all the cases was under the provisions of the Andhra Pradesh Water, Land and Trees Act, 2002 (hereinafter, referred to as 'the Act of 2002').

In Writ Petition Nos. 15434, 15435, 15444, 15445, 15446, 15447, 15448 and 15895 of 2012, notices in this regard were issued by the Tahsildars of Kodangal and Bomraspet Mandals and in W.P.No.13427 of 2012, the Tahsildar of Kalwakurthy Mandal, stating that the goods vehicle in question was transporting sand illegally and that a penalty of Rs.1,00,000/- was imposed upon each such vehicle under the Act of 2002. No mention was made in the impugned notices in these cases as to under which provision of the Act of 2002 the penalty was imposed. The petitioners in all the aforestated cases allege that no prior notice was issued and no opportunity was given to them before imposition of the penalty.

This Court granted interim orders in the above cases directing release of the seized vehicles subject to the petitioners therein depositing a sum of Rs.25,000/- (Rs.50,000/- in W.P.No.13257 of 2012) towards each such vehicle.

In Writ Petition Nos.24670, 24672, 25005, 25861, 25862, 25865, 28336, 30047 and 32711 of 2012, the impugned notices were issued by the Tahsildar of Kurnool Mandal, stating that transportation of a huge quantity of sand was done in the seized vehicles and that as per the provisions of Section 37 of the Act of 2002 and Rule 27 of the Andhra Pradesh Water, Land and Trees Rules, 2004 (for brevity, 'the Rules of 2004'), penalty at the rate of Rs.1,00,000/- per vehicle was imposed. In all these cases also, this Court directed release of the seized vehicles on deposit of a sum of Rs.25,000/- per vehicle. The petitioners in these cases asserted that they never offered to pay any penalty to compound the offence alleged against them but notwithstanding the same, the impugned orders purporting to be in exercise of powers to compound offences under Section 37 of the Act of 2002 and Rule 27 of the Rules of 2004 were passed.

No counter-affidavits were filed by the respondent authorities in any of the aforestated cases.

In W.P.Nos.13366 and 13473 of 2012, the petitioners' grievance

was that their goods vehicles were seized while transporting sand and despite their having proper documentation for the same, the respondent authorities insisted on payment of penalty of Rs.50,000/- per each vehicle. No notices imposing such penalty were however issued to the petitioners. In these cases also, this Court directed release of the seized vehicles subject to deposit of a sum of Rs.25,000/- per vehicle. No counter-affidavits were filed by the respondent authorities in these two cases also.

In W.P.No.28335 of 2012, the petitioner's goods vehicle was seized while transporting sand and as per the impugned compounding order issued in Form 7 dated 07.09.2012, the Tahsildar, Bomraspet Mandal, stated that an offence was booked against the petitioner under Section 27 of the Act of 2002 and in view of the willingness expressed by the accused, a sum of Rs.50,000/- was directed to be paid towards compensation subject to which the seized lorry was directed to be released. The petitioner however asserted that no opportunity was provided to him and no explanation was called for by issuing a show cause notice. He further asserted that he had not agreed to pay any penalty as he had not committed any offence. No counter-affidavit was filed by the respondent authorities rebutting the aforestated averments. As in the other cases, this Court directed release of the petitioner's vehicle upon deposit of a sum of Rs.25,000/-.

In W.P.No.23505 of 2012, the case of the petitioner was that his goods vehicle was seized while transporting sand though all necessary documentation was produced. Thereafter, by the impugned proceedings dated 28.07.2012, the Tahsildar, Kothakota Mandal, recorded that the petitioner had stated under his representation dated 28.07.2012 that he would never commit such a mistake in future and requested for imposition of penalty. The Tahsildar therefore stated that he had imposed the penalty of Rs.1,00,000/-. The petitioner however specifically averred in his writ affidavit that he never made any such representation on 28.07.2012 requesting for imposition of penalty and that the penalty

was not traceable to any provision of law.

The Tahsildar (FAC), Kothakota Mandal, Mahabubnagar District, filed a counter-affidavit stating that the petitioner's vehicle was seized as no valid permit was produced. He further stated that the petitioner made a representation on 28.07.2012 acknowledging that there was no permit for the lorry to transport sand from Kurnool and requesting release of the vehicle by imposition of a penalty. He denied the petitioner's allegation that he had not made such a representation and further stated that a copy of the representation was enclosed with the counter for perusal. However, no such representation was filed along with the counter-affidavit. In this case also, release of the vehicle was directed subject to the petitioner depositing a sum of Rs.25,000/-.

In W.P.No.13257 of 2012, five goods vehicles allegedly belonging to the petitioners were stated to have been seized while transporting sand. By the impugned proceedings dated 27.04.2012, the Tahsildar, Kondurg Mandal, Mahabubnagar District, recorded that the transportation of sand was being done illegally without requisite permits and therefore, pursuant to the powers conferred under Rule 27 of the Rules of 2004, he imposed the penalty of Rs.1,00,000/- per lorry and directed the Station House Officer, Kondurg, to release the seized lorries after receipt of the fine imposed. The petitioners specifically averred that they never offered to pay any amount and therefore, the question of compounding any offence by them under Rule 27 of the Rules of 2004 did not arise. They further stated that no opportunity was provided to them as no explanation was called for by issuing a show-cause notice and alleged that the Tahsildar straight away issued the impugned proceedings.

The Tahsildar, Kondurg Mandal, Mahabubnagar District, filed a counter-affidavit asserting that the goods vehicles in question were transporting sand without valid permits and that the same was in violation of the provisions of the Act of 2002 and the Rules of 2004. He stated that the police authorities apprehended the vehicles and informed the same to his office, whereupon action was taken in accordance with the due

procedure. He further stated that cases were booked against the petitioners under Rule 27 of the Rules of 2004 and penalty was imposed at the rate of Rs.1,00,000/- per vehicle. Significantly, the Tahsildar did not claim that any of the petitioners came forward to compound the alleged offences, whereby he could have invoked the powers to do so under Rule 27 of the Rules of 2004. In this case also, release of the seized vehicle was directed by this Court upon deposit of half of the amount mentioned in the impugned notices.

Needless to state, illegal and uncurbed mining of sand is a cause for grave concern as such untrammeled mining adversely impacts water bodies and river beds, thereby having a calamitous effect on ecology and environment. It is therefore essential that the State regulate such mining activity. The Act of 2002 and various other mining laws aim to achieve this objective. However, implementation of these laws would necessarily have to be effected by the authorities concerned strictly in adherence with the procedure prescribed. Allowing the State to resort to unbridled exercise of power purportedly under these laws with scant regard to the prescribed procedure would lead to arbitrariness, which is anathema to the Rule of Law. If, at one end of the spectrum, illegal sand mining warrants strict action in accordance with law, at the other, arbitrary exercise of power by the authorities, ostensibly for this purpose, has to be condemned in no uncertain terms.

In the cases on hand, the question before this Court is not whether the transportation of sand by the petitioners in their goods vehicles was legal. The petitioners assert so while the respondent authorities allege otherwise. However, if the respondent authorities found such transportation to be illegal, they necessarily had to follow the due procedure laid down by law for taking action against the petitioners. Therefore, the only issue that falls for consideration before this Court is whether the authorities exercised such power in these cases as per due procedure.

Perusal of the provisions of the Act of 2002 reflects that the Act

was promulgated to promote water conservation and tree cover apart from regulating the exploitation and use of ground and surface water; for protecting and conserving water sources; land and environment and matters connected therewith or incidental thereto. Section 3 of the Act of 2002 contemplates the constitution of the Water, Land and Trees Authority, a body corporate having perpetual succession and a common seal. This Authority is to meet at least once in three months as per Section 4. The functions of this Authority are set out in Section 6. Section 7 provides for delegation of powers by the Authority to the District Level, Division Level and Mandal Level authorities or any Department or Officer of the Government or Local Bodies for carrying out the provisions of the Act of 2002. Ground water protection measures are covered by Chapter III of the Act of 2002, while surface water protection measures fall within Chapter IV thereof. Section 27 in Chapter IV of the Act of 2002 relates to sand mining and states that the Authority constituted under Section 3 may frame guidelines for sand mining from water bodies wherever such sand mining is environmentally harmful, both in private and Government lands. The Proviso to this Section states that sand mining shall not be permitted in over exploited basins as declared by the Authority under sub-section (1) of Section 11. Chapter VI of the Act of 2002 deals with miscellaneous provisions and Section 35 falling in this Chapter deals with penalties. Section 35(1) provides that whoever contravenes any of the provisions of the Act or any order or rule made under the Act shall be punished with fine which shall not be less than Rs.1,000/- but which may extend to Rs.5,000/-. Sub-section (2) of Section 35 states that whoever, without any lawful authority, damages, alters, pollutes or obstructs any part of a public water supply system or a water body, or encroaches water bodies, including tanks, lakes, ponds, etc., or contaminates ground water in any manner, shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months or with fine which shall not be less than Rs.2,000/- but which may extend to Rs.50,000/- or with both. Section 37

falling in this Chapter deals with compounding of offences and states to the effect that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the authority or the designated officer or any officer authorized by the Government may accept from any person who committed an offence punishable under the Act of 2002, other than the offences punishable under Section 35(2) thereof, a sum of money as may be prescribed by way of compounding of the offence.

The Rules of 2004 were framed in exercise of the powers conferred by Section 45(1) of the Act of 2002. This Section empowers the Government, by notification, to make rules to carry out all or any of the purposes of the Act of 2002. Rule 8 of the Rules of 2004 deals with constitution of District Authorities, while Rule 9 relates to Divisional Authorities. Constitution of Mandal Authorities is dealt with under Rule 10, while Rule 11 details the procedure for meetings of such authorities. Rule 23 deals with sand mining, while Rule 25 deals with offences. Rule 26 deals with penalties and states to the effect that whoever contravenes any of the provisions of the Act of 2002 shall be punishable with fine which shall not be less than Rs.1,000/- but which may extend to Rs.5,000/-. Rule 27 deals with compounding of offence and Sub-Rule (1) thereof provides that the Authority or the designated officer or any officer authorized by the Government in this regard, as the case may be, may accept from any person who committed or who is reasonably suspected of having committed an offence in relation to contravention of Sections 10, 14 and Section 27, being other than an offence punishable under sub-section (2) of Section 35 of the Act of 2002, a sum not less than Rs.One Lakh, by way of compounding.

Significantly, none of the aforestated provisions specifically deal with ‘transportation’ of sand. In the present case, it is not the claim of the authorities that the goods vehicles in question were seized at the time of any illegal sand mining. All the vehicles were seized only in the course of transportation of sand. In effect, the provisions relating to illegal sand mining would have no application and the authorities have to take

recourse to the law relating to illegal transportation of sand without due and valid permits. However, as the authorities took recourse to Section 27 of the Act of 2002 in some of the cases, the learned Government Pleader for Revenue, appearing for the respondent authorities, was asked as to whether the Authority constituted under Section 3 of the Act of 2002 had framed any guidelines for sand mining from water bodies, which could perhaps have also dealt with the issue of transportation of such sand. However, the learned Government Pleader fairly conceded that an Authority under Section 3 of the Act of 2002 has not even been constituted till date and therefore, the question of such a body framing guidelines did not arise. In the absence of such guidelines, recourse taken by the Tahsildars concerned to Section 27 of the Act of 2002 is wholly untenable. Section 27 of the said Act is only an enabling provision, whereby the Authority under Section 3 of the Act of 2002 is empowered to frame guidelines. It is only if such guidelines are framed the question of violation thereof would arise, constituting an offence under the provisions of the Act of 2002. Section 35(2) of the Act of 2002, no doubt, deals with damage, alteration or obstruction of a water body. By stretching the language thereof, it could perhaps be construed that removal of sand from such a water body and transporting the same thereafter could be brought within its ambit. But, Section 35(2) provides for imposition of a fine ranging only between Rs.2,000/- and Rs.50,000/- and/or imprisonment. Further, Section 37 of the Act of 2002 and Rule 27 of the Rules of 2004 specifically exclude offences punishable under Section 35(2) from their ambit and thereby, such offences are not amenable to compounding.

To complicate matters further, Rule 27 of the Rules of 2004, which provides for compounding of offences, specifically states that a sum not less than Rs. One Lakh, by way of compounding of an offence, shall be levied in respect of contravention of Sections 10, 14 and 27. Section 10 deals with permission for well-sinking near drinking water sources while Section 14 relates to registration of drilling rigs. These provisions have

no application whatsoever to the cases on hand. Further, as already stated *supra*, no guidelines have been framed under Section 27, whereby any violation thereof can be alleged, constituting an offence. In effect, the power of compounding under Rule 27 of the Rules of 2004 had no application at all to the present cases.

Further, the very concept of compounding requires that the person who is alleged to have committed the offence, or who is reasonably suspected of having done so, must voluntarily come forward to pay a sum of money so as to compound the offence. In all the cases on hand, except one, there is no whisper of the petitioners having come forward to compound the offences alleged against them. On the other hand, all of them unanimously contend that they had never offered to pay any penalty as they had not committed any offence. Even in W.P.No.23505 of 2012, where the impugned proceedings refer to a representation alleged to have been made by the petitioner therein offering to compound the offence, he specifically contended in his writ affidavit that he had never made such a representation. The Tahsildar concerned filed a counter-affidavit rebutting the statement but did not choose to produce a copy of the said representation, though he stated in the counter that a copy was appended thereto.

Learned Government Pleader for Revenue was therefore asked to verify the records relating to all these cases to ascertain as to whether any of the petitioners had actually come forward to compound the offences alleged against them, whereby the Tahsildar concerned could have taken recourse to exercise of such powers. The learned Government Pleader was however unable to cite even a single instance of an offer having actually been made.

Reliance was however placed by the learned Government Pleader on G.O.Ms.No.142, Industries and Commerce (Mines-I) Department, dated 13.10.2012, which lays down the revised policy guidelines in relation to sand mining. However, the actions impugned in these writ petitions were not relatable to these guidelines but were only

under the Act of 2002 and the Rules of 2004. These guidelines would therefore have no application to the cases on hand.

Despite the valiant efforts made by the learned Government Pleader for Revenue to justify the impugned actions taken by the Tahsildars concerned in relation to the transportation of sand by the petitioners, this Court finds no legal foundation supporting the same.

Further, what is more distressing to note is that the State authorities are only interested in making money out of the alleged illegal transportation of sand, which is counter-productive to the very objective sought to be achieved by promulgating laws to arrest unauthorized mining of sand. The State authorities would therefore have to introspect on their motives and objectives while implementing laws of this nature.

On the aforestated analysis, this Court finds that the impugned proceedings/notices in these cases were not legally well founded as the provisions of Section 37 of the Act of 2002 and Rule 27 of the Rules of 2004 had no application whatsoever. These provisions are not mentioned in some of the cases but action was purportedly taken under the provisions of the Act of 2002. This Court however finds no other provision in the Act of 2002 enabling the authorities to impose a fine/penalty of Rs.1,00,000/- per vehicle. In those cases where seizure was effected but no proceedings were issued, the learned Government Pleader fairly conceded that such action was also on the basis of the Act of 2002 and therefore, the same considerations would apply. The seizure of the vehicles and the consequent imposition of fine/penalty, be it by way of compounding or otherwise, are therefore found to be without legal basis. The impugned proceedings/ notices are accordingly set aside.

The writ petitions are allowed. The amounts collected from the petitioners under the interim orders passed in these cases shall be refunded to them within four weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions, if any, in this batch of cases shall stand closed in the light of this final common order. No order as to

costs.

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**SANJAY KUMAR, J**

**15th SEPTEMBER, 2015**
**L/R copy to be marked – Yes**
**B/o Svv**