

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.15019, 15020 & 15060 of 2015

COMMON ORDER:

In all these three writ petitions, the petitioners are the owners of Tractors. The allegations made against the petitioners are that they were transporting sand illegally without due permission and authorization. While transporting the sand illegally, the Station House Officer concerned seized the vehicles on 29.04.2015 and the same was reported to the Tahsildar, Bheemgal. As a consequence to reporting of transportation of sand illegally, the Tahsildar, Bheemgal caused notice on the petitioners on 01.05.2015 in W.P.Nos.15019 and 15020 of 2015 directing them to appear before him on 08.05.2015. Accordingly, both the petitioners appeared and the petitioners requested to furnish copy of a report stated to have been filed by the Station House Officer. They have also submitted that the vehicles were empty and illegally, they were seized. Even though the relevant information was furnished by the petitioners, without considering the same, on the same day, the Tahsildar passed the impugned order confiscating the vehicles.

2. Insofar as the petitioner in W.P.No.15060 of 2015 is concerned, no notice was issued to her and straightaway, the vehicle was seized. According to the learned counsel for the petitioner insofar as this petitioner is concerned, her name was not mentioned in the notice as well as in the confiscation order, but her vehicle was confiscated.

3. According to the learned counsel for the petitioners, detailed procedure has to be followed, as envisaged in the Telangana State Sand Mining Rules, 2015 and as amended, notification of which was published vide G.O.Ms.No.15, Industries and Commerce (Mines-I)

Department, dated 19.2.2015. According to para No.12(4) of this notification, a detailed procedure is envisaged before confiscating a vehicle. Competent authority is required to issue show cause notice to the person/owner from whom the vehicle/machinery was seized, call for the explanation and after filing of explanation, consider the matter, and if the competent authority is of the opinion that the vehicle can be released on levying of penalty, proper penalty can be levied and vehicle can be released. Para No.12 (2) of the said notification prescribes levy of penalty. If the authority is not satisfied with the explanation, it is permissible for the competent authority to confiscate the vehicle.

4. The provision, as referred to above, mandates following a detailed procedure for confiscation of the vehicle. Apparently, as contended by the learned counsel for the petitioners, on 08.05.2015, the petitioners requested for furnishing of report of the Station House Officer, which was stated to be the basis for initiating the proceedings for confiscation of the vehicles. Without furnishing the said report and without affording further opportunity, the Tahsildar ought not to have confiscated the vehicles on the same day. Furthermore, confiscation of the vehicle insofar as the vehicle of the petitioner in W.P.No.15060 of 2015 is *ex facie* illegal inasmuch as even the procedure of issuing notice was not followed.

5. As the confiscation of the vehicles involve depriving of the right of the petitioners to use the vehicles for carrying transportation and for eking out their livelihood, the authority ought to have followed proper procedure as warranted by law before taking penal action.

6. Having regard to the above, the impugned confiscation proceedings are set aside and the matter is remitted to the Tahsildar - respondent No.2 for consideration of the matter from the stage of issuance of notice, as contemplated by para No.12(4) of

G.O.Ms.No.15, dated 19.2.2015, and after affording due opportunity to the petitioners including personal hearing and after furnishing all relevant documents, appropriate orders, as warranted by law, are to be passed.

7. Since the vehicles have been confiscated long ago and are exposed to rain and sunlight, in the interests of justice, the Tahsildar – respondent No.2 is directed to release the vehicles subject to levying of penalty, as prescribed in para No.12(2) of G.O.Ms.No.15, dated 19.2.2015, and as amended in G.O.Ms.No.54, Industries and Commerce (Mines.I) Department, dated 21.8.2015, within a period of two (2) weeks subject to payment of the penalty levied. However, the petitioners shall produce the vehicles as and when required by the Tahsildar. They shall also not create third party interest in the vehicles. An affidavit shall be filed before the Tahsildar to this extent along with the payment of penalty levied by the Tahsildar. Release of vehicles and levy of penalty shall abide the final orders to be passed by the Tahsildar, as directed above.

8. With the above direction, the Writ Petitions are allowed. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in these Writ Petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 21.9.2015
AMD

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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