

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

**MONDAY, THE TWENTY EIGHT DAY OF SEPTEMBER
TWO THOUSAND AND FIFTEEN**

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Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31193 of 2015

Between:

Arikala Srinivasa Reddy,
S/o. Ram Chandar Reddy,
Aged about 42 years,
R/o. H.No.3-112/1/2B, Pitlam,
Nizamabad, Nizamabad District.

.. Petitioner

AND

The State of Telangana,
Rep. by its Public Prosecutor,
Home Department,
Secretariat, Hyderabad & 3 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

The petitioner is the owner of Lorry bearing No.AP 23Y 6727. The allegation made against the petitioner is that he was transporting sand illegally without due permission and authorization. While transporting the sand illegally, the Tahsildar, Bodhan Mandal, Nizamabad District (4th respondent) seized the vehicle of the petitioner on 01.09.2015 and handed over the same to the Station House Officer, Bodhan Police Station, Bodhan, Nizamabad District (2nd respondent). The 2nd respondent in turn registered a case in Crime No.294 of 2015, dated 02.09.2015, under Section 379 IPC and Section 35(1) of the Water, Land and Tress Act, 2002 (for short, 'WALTA Act'). Even though the relevant information was furnished by the petitioner, without considering the same, on the same day, the 4th respondent handed over the vehicle to the 2nd respondent.

2. No notice was issued to the petitioner by the Tahsildar and straightaway, the vehicle was seized. The petitioner submitted a representation to the Joint Collector, Nizamabad District, Nizamabad (3rd respondent) on 04.09.2015, but so far, no orders are passed.

3. According to the learned counsel for the petitioner, 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 19.02.2015. 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. Furthermore, confiscation of the vehicle of the petitioner is *ex facie* illegal inasmuch as even the procedure of issuing notice was not followed.

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

6. Having regard to the above, the matter is remitted to the Tahsildar, Bodhan Mandal, Nizamabad District

(2nd respondent) 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, Industries and Commerce (Mines-I) Department, dated 19.2.2015, and after affording due opportunity to the petitioner including personal hearing and after furnishing all relevant documents, appropriate orders, as warranted by law, are to be passed.

7. Since the vehicle has been confiscated long ago and is exposed to rain and sunlight, in the interests of justice, the 2nd respondent is directed to release the vehicle subject to levying of penalty, as prescribed in Para No.12(2) of G.O.Ms.No.15, Industries and Commerce (Mines-I) Department, 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 petitioner shall produce the vehicle as and when required by the Tahsildar. He shall also not create third party interest in the vehicle. An affidavit shall be filed before the Tahsildar to this extent along with the payment of penalty levied by the Tahsildar. Release of vehicle 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 Petition is allowed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 28th September, 2015

Note: Issue C.C. in two (2) days.

(B/o.)
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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31193 of 2015

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Date: 28th September, 2015

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