

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 No.20916 of 2015

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Between:

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Bhoosani Ganesh

...Petitioner

and

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The State of Telangana, rep. By its Principal Secretary, Prohibition &
Excise Department, Secretariat, Hyderabad
and others

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...Respondents

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Dated 27-07-2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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

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

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3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

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THE HON'BLE SRI JUSTICE A.V. SESA SAI
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Writ Petition No.20916 of 2015

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ORDER:
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This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

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"to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in not considering the appeal to the extent of releasing the black jaggery vide Memo No.11132/Ex/II/2014-5 dated 18-05-2015 by the respondent No.1 and also order passed by the respondent No.2 vide Cr.No.597/2014/CPE/D1 dated 14-10-2014 by confirming the order passed by the respondent No.3 vide Proc.No.Cr.No.145/2014/C, dated 02-05-2014 confiscating the black jaggery as arbitrary and illegal also violative of Article 14 of the Constitution of India and consequently direct to set aside the same thereby direct the respondents to release the black jaggery or to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."
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Heard G. Madhusudhan Reddy, learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise.

The Deputy Commissioner of Prohibition and Excise, Nalgonda, the 3rd respondent herein, pressed into service the provisions of the A.P. Excise Act, 1968 (for short the 'Excise Act'), and the A.P. Prohibition Act, 1995 (for short 'the Prohibition Act') and passed an order dated 02-05-2014, vide Cr.No.145/2014/C, in exercise of powers conferred under Section

46(2) of the Excise Act and Section 13 of the Prohibition Act, ordering confiscation of the vehicle bearing No.A.P.10 V 8064 and black jaggery/Alum to the State. As against the said order of confiscation, passed by the 3rd respondent, the petitioner herein filed the statutory appeal before the Commissioner of Prohibition and Excise, the 2nd respondent herein. The 2nd respondent by way of an order vide proceedings CR.No.597/2014/CPE/D1, dated 14-10-2014, dismissed the said appeal filed by the petitioner herein, thereby confirming the orders of confiscation passed by the 3rd respondent. Impugning the said orders passed by the respondents 2 and 3, the petitioner herein preferred further appeal before the 1st respondent-State on 09-12-2014, with a prayer to release the vehicle and 72 pieces of black jaggery, each piece containing 18 Kgs. The 1st respondent, by virtue of an order vide Memo No.11132/Ex.II(2)/2014-5, dated 18-05-2015, directed release of the vehicle - Auto Trolley, bearing No.AP-10V-8064, without prejudice to the case pending in PCR.No.799/2013-14, dated 11-03-2014, subject to furnishing of a third party surety by the petitioner. Calling in question the validity and legal sustainability of the said order passed by the 1st respondent, to the extent of not passing any orders with regard to black jaggery, the present writ petition has been filed.

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It is contended by the learned counsel for the petitioner that the order of the 1st respondent to the extent of the failure to pass any orders on the confiscated jaggery is highly illegal, arbitrary, unreasonable, and violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.

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On the contrary, it is contended by the learned Government Pleader for Prohibition and Excise that there is no illegality in the impugned order passed by the 1st respondent, and in fact, orders have been passed, releasing the vehicle, subject to

certain conditions. It is further submitted that the jaggery confiscated from the vehicle of the petitioner herein is not suitable for human consumption.

There is absolutely no dispute with regard to the reality that the 3rd respondent passed an order on 02-05-2014, confiscating not only the vehicle but also the jaggery of the petitioner herein. It is also an undisputed fact that as against the orders of confiscation, passed by the 3rd respondent, the petitioner filed appeal before the 2nd respondent, who by virtue of the orders dated 14-10-2014, dismissed the appeal, thereby confirming the orders passed by the 3rd respondent. There is absolutely no dispute with regard to the fact that the petitioner herein preferred further appeal before the 1st respondent-State against the orders of confiscation of the vehicle, as well as the jaggery. A perusal of the order of the 1st respondent, which is impugned in the present writ petition, clearly and manifestly discloses that the 1st respondent herein did not at all consider the appeal to the extent of the confiscated jaggery, except passing an order, releasing the vehicle, subject to certain conditions. This, in the considered opinion of this Court, is neither sustainable nor tenable in the eye of law. Being a *quasi judicial* authority, it is obligatory and incumbent on the part of the 1st respondent to deal with the entire appeal and the relief sought therein, and pass appropriate orders. Therefore, this Court deems it appropriate to remand the matter, only to the extent of passing orders on the confiscated jaggery, which is also the subject-matter of appeal before the 1st respondent.

For the foregoing reasons, the writ petition is allowed, setting aside the impugned Memo No.11132/Ex.II(2)/2014-5, dated 18-05-2015 only to the extent of failure to consider the relief with regard to confiscated jaggery of the petitioner herein. The 1st respondent shall consider the matter afresh with regard to jaggery only and pass

appropriate orders within a period of one month from the date of receipt of a copy of this order. It is also made clear that the order passed by the 1st respondent vide Memo No.11132/Ex.II(2)/2014-5, dated 18-05-2015 shall remain intact to the extent of release of the vehicle.

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The miscellaneous petitions, if any, filed in the writ petition, shall also stand disposed of. There shall be no order as to costs.

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A.V. SESA SAI, J.

Dt.27-07-2015.

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