

In the High Court of Judicature at Madras

Dated: 22.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.43139 of 2016

and

W.M.P.No.37071 of 2016

S.M.Mani Gounder Petitioner

Vs.

The Revenue Divisional Officer,
Villupuram Division,
Villupuram,
Villupuram District. Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the proceedings of the respondent herein in Na Ka No.A4/5044/2016 dated 21.11.2016 and quash the same and further to direct the respondent herein to release the petitioner's vehicle bearing Registration No.TN 31 D 0937.

For Petitioner : Mr.C.S.K.Satish
for Mr.S.Lakshmanasamy

For Respondents : Mr.C.Jagdish
Special Government Pleader

O R D E R

The petitioner is the owner of the Tractor bearing Registration No.TN 31 D 0937. He filed the present writ petition challenging the order of the respondent dated 21.11.2016, wherein the respondent has imposed a penalty of Rs.50,000/- for carrying unpermitted sand and also for producing false document, for the purpose of getting the vehicle released.

2.The petitioner's vehicle was seized on 29.07.2016 on an allegation that the petitioner transported the sand without the permit. The petitioner filed a writ petition before this court in W.P.No.28407 of 2016 for a mandamus to release the vehicle.

On 26.08.2016, this court directed the respondent herein, who was arrayed as the second respondent therein, to consider the petitioner's representation dated 03.08.2016 and verify the documents produced by him viz., the sale slip issued by the licensee at the stock yard dated 27.07.2016 and the sales invoice dated 27.07.2016 and if satisfied, the authority may pass appropriate orders for release of the vehicle within a period of two weeks from the date of receipt of a copy of the said order. However, even before the said order passed by this court reached the respondent, an order came to be passed on 08.09.2016, releasing the vehicle on payment of fine amount of Rs.25,900/-. The said order was challenged once again before this court in W.P.No.33974 of 2016 with a consequential direction for release of the vehicle. The said writ petition was allowed on 27.09.2016, by remitting the matter back to the respondent with a direction to the respondent to issue notice of personal hearing to the petitioner, call upon him to produce necessary documents to substantiate his claim, verify their authenticity as well as admissibility and efficiency of the same and thereafter, pass a speaking order on merits and in accordance with law.

3. Consequent upon the said order passed by this court, a personal hearing was held on 10.11.2016, on which day, the petitioner had admittedly appeared before the respondent, as could be seen from the impugned order itself. However, by contending that the petitioner has not produced any documents to substantiate his claim and that the sale slip No.3750 produced by the petitioner before this court was fraudulently prepared by the petitioner for the purpose of release of the vehicle, the respondent has passed the present impugned order as stated supra by imposing the penalty of Rs.50,000/-. According to the respondent, the sale slip No.3750 does not pertain to one Venkatesan as claimed by the petitioner and on the other hand, it was issued in the name of one Murthydasan, that too, for another vehicle TN 54 AK 7914.

4. During the pendency of this writ petition, by way of interim order, the petitioner paid the fine amount of Rs.25,900/- and got the vehicle released. Now the petitioner is aggrieved against the imposition of penalty as well as the allegation made by the respondent as though he has fraudulently prepared the documents and got the vehicle released.

5. Learned counsel appearing for the petitioner submitted that it is the third round of litigation for the petitioner in respect of the very same transaction and every time when this court set aside the impugned order and remitted the matter back to the respondent, she has chosen only to pass some adverse orders against the petitioner one after another, without strictly

following the directions issued by this court and considering the documents produced by the petitioner. He further contended that the allegation of filing false document was made by the respondent based on some documents obtained from the licensee of the sand yard and those documents are not furnished to the petitioner at any point of time and that the petitioner was not given an opportunity to put forth his contention as to how the allegation of filing false document is factually incorrect. In other words, it is the contention of the petitioner that apart from not considering the documents already filed by the petitioner, the respondent has also relied on some materials obtained from a third party viz., the owner of the sand yard without furnishing copy of those materials to the petitioner. Thus, the crux of the submission made by the learned counsel is that the respondent has violated the principles of natural justice at every time. He also submitted that the respondent has no power to impose penalty for producing the false document.

6. On the other hand, the learned counsel for the respondent submitted that the impugned order came to be passed after hearing the petitioner on 10.11.2016, on which day, he did not produce any documents. He further submitted that the penalty was imposed on the petitioner not only on the ground of producing false document but also for carrying unpermitted sand.

7. Though the learned counsel for the respondent has submitted so, he has fairly admitted that the file received from the respondent would disclose that the petitioner produced some documents along with his written submission made on 10.11.2016. He also admitted the position that the documents recovered from the sand yard owner were not furnished to the petitioner so as to get his explanation on such documents.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

9. It is seen that the petitioner has approached this court repeatedly by filing one writ petition after another in respect of the very same transaction and every time, this court has remitted the matter and directed the respondent herein to adhere to the principles of natural justice in strict sense and to pass a speaking order. No doubt, this time, the respondent has chosen to pass an order with some reasons. However, consideration of the facts and circumstances as stated supra would reveal that the respondent has violated the principles of natural justice once again, as the petitioner was not furnished with the documents collected from the owner of the sand yard for getting his explanation, especially, when the respondent has chosen to rely on such documents to come to the conclusion that the petitioner

filed a false document viz., sale slip No.3750. According to the petitioner, the said sale slip No.3750 was given to him, being the owner of the vehicle, by the purchaser of the sand viz., one Venkatesan. Therefore, the learned counsel for the petitioner contended that the petitioner cannot be found fault with, as he is not the creator of the document. Therefore, it is evident that the respondent has not considered the order passed by this court in strict sense by applying her mind to the facts and circumstances of the case by affording a reasonable opportunity to the petitioner.

10. In so far as the imposition of penalty is concerned, needless to say that if the disputed transportation is with some permit, the question of imposing penalty may not arise. Such question has to be considered and decided only after hearing the petitioner and considering the documents already filed by him and also after getting the explanation from him in respect of the documents collected from the sand yard owner. Therefore, this court is of the view that the matter has to be remitted back for fresh consideration of course not by the same officer and by any other competent Officer of Villupuram District. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the Sub Collector, Tindivanam, for considering the matter afresh after affording an opportunity of hearing to the petitioner. The respondent is directed to transfer the relevant file to the Sub Collector, Tindivanam forthwith. Needless to say that the issue with regard to the penalty can also be considered by the said official after hearing the petitioner and considering the documents filed by him and also the explanation to be furnished by him based on the documents which are collected by the respondent from the sand yard owner. The Sub Collector, Tindivanam shall furnish those documents to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of copy of those documents, the petitioner shall furnish his further explanation with supportive documents within a period of two weeks thereafter. On receipt of his explanation, the Sub Collector, Tindivanam, shall give an opportunity of personal hearing to the petitioner and pass detailed order on merits and in accordance with law within a period of four weeks thereafter. No costs. The connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Revenue Divisional Officer,
Villupuram Division,
Villupuram,
Villupuram District.

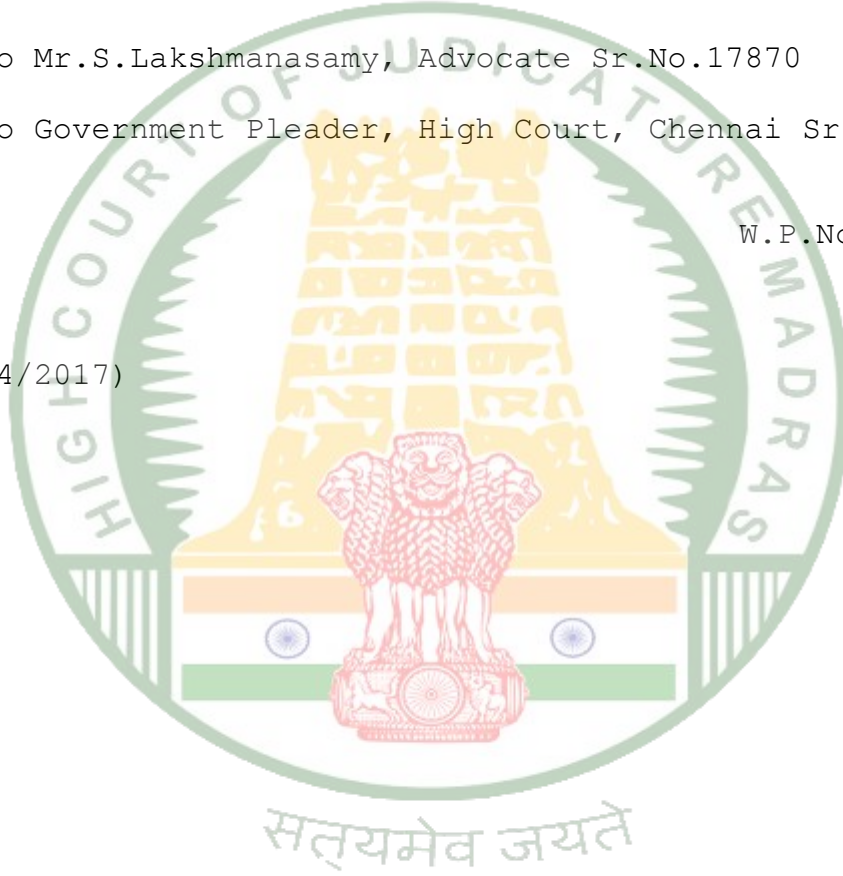
2.The Sub Collector,
Tindivanam.

+1 CC to Mr.S.Lakshmanasamy, Advocate Sr.No.17870

+1 CC to Government Pleader, High Court, Chennai Sr.No.18335

W.P.No.43139 of 2016

SKS (CO)
KP (11/04/2017)



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