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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON:15.06.2017
ORDER PRONOUNCED ON:17.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.7098 of 2017

S.K.Venkatachalam

.. Petitioner

Vs.

1.The Commissioner of Geology and Mining,
(The appellate authority under the
Geology and Mining Act),
Guindy, Chennai-32.

2.The District Collector,
(Authority under Mines and Minerals)
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondents to release the petitioner's TATA MODEL LP.T.2516 TC bearing Registration No.TN 52 H 4581 within the time stipulated by this Court.

For Petitioner : Mr.K.C.Maniyarasu

For Respondents : Mr.B.Pugalendhi
Additional Advocate General

ORDER

This writ petition has been filed praying for the issuance of a Writ of Mandamus to direct the respondents to release the petitioner's TATA MODEL LP.T.2516 TC bearing Registration No.TN 52 H 4581.

2. The petitioner would aver among other things that he is the owner of S.K.P.Transport and transporting granite stones from the quarrying bit to granite factories. The petitioner further submits on 03.05.2016, one G.Koteswara Rao, the Managing Partner of Murugan Granites approached the petitioner

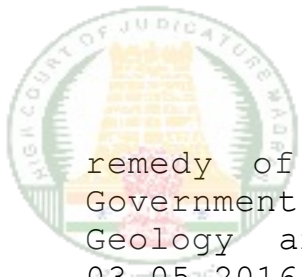


Company to transport multi-coloured granites from the quarry which is in Arasiamani Bit-2 Village, Sangagiri Taluk, Salem District to their granite factory in Madurai District. While so, one of the trailers of the petitioner Company loaded with rough granite block to transport goods from Arasiramani Bit-II quarry with Registration No.TN 52 H 4581. While the lorry came from the quarry, it was stopped on the midway of the travel due to some mechanical issues. Therefore, the driver of the lorry, namely, one Mr.Karuppiah rushed to nearby mechanical shop and brought a mechanic from M/s.Saravana Diesel Works Mechanic Shop, Avarampalayam, Sangagiri road. It was found that the clutch plate of the lorry was damaged and subsequently, it was repaired on 05.05.2016.

3. The further case of the petitioner is that on 07.05.2016, when the vehicle reached near Karupayoorani, Madurai District, the Mining Authorities stopped the vehicle and checked the trip sheet. The authorities questioned the delay in transporting the granites in question, to which, the petitioner gave explanation that since the vehicle was repaired during the transit, there was a delay. Further, the authorities found that as per the dispatch slip, the actual measurement of the rough rock is A.D.301 with measurement of 332 cm x 188 cm x 210 cm to the tune of 13.107 cubic meter, whereas, the trailer lorry had been loaded by 13.198 cubic meter of granite block with measurement of 260 cms x 235 cms x 216 cms. According to the petitioner, there is a slight difference of 0.091 cubic meters.

4. The petitioner further submits that though the driver explained that the vehicle was only engaged for transporting the rough rocks on rental basis and it does not belong to the quarry owners, the respondent officials did not agree and seized the vehicle and brought it to the Madurai Coelenterate Campus. The second respondent issued proceedings dated 26.05.2016 stating that there was four days delay between the permit issued on 03.05.2016 and the vehicle seized on 07.05.2016 and though the petitioner company produced the copy of the bills for the purchase of spare parts and the bills of the repair charges given by M/s.Saravana Diesel Works, Sangagiri, the second respondent came to the conclusion the petitioner company transported rough rock more than one time with one permitted slip. Explaining all these factors, the petitioner sent an application dated 22.12.2016 to the first respondent requesting him to release the vehicle and the said request was turned down by the respondents. Hence, the petitioner came forward to file this present writ petition.

5. The learned Additional Advocate General through his <https://hccourts.gov.in/fcsdms/> would submit that this writ petition is not maintainable on the reason that as per Rule 36-C(3) of the Tamil Nadu Minor Mineral Concession Rules, 1959, there is statutory



remedy of appeal available before the Principal Secretary to Government Industries Department. Further, the Deputy Director of Geology and Mining, Salem has issued the dispatch slip on 03.05.2016 for the transport of granite block No.301 to the tune of 13,107 cbm with measurement of 332 cm x 188 cm x 210 cm, whereas, it was found that the lorry had been loaded with 13.198 cbm of granite block with measurement of 260 cm x 235 cm x 216 cm. It is further averred that the maximum time of 12 hours is enough for arriving at Madurai from the locations of quarry site in Sangagiri Taluk of Salem District. But the seized vehicle arrived at Madurai after the day of four days. That apart, one Senthil Murugan who appeared on behalf of the petitioner Company has contended that the delay was due to the damage of clutch plate, whereas, the driver has not stated about the damage to the clutch plate at the time of apprehension. Hence, it can be reasonably presumed that the explanation is only a cover up exercise and that the dispatch slip was made use of for multiple transportation of granite blocks for making huge profit at the cost of government exchequers. Hence, after affording reasonable opportunity of hearing, the order impugned in the present writ petition was passed by the second respondent by imposing a penalty of Rs.5,72,256/- for the violation of Section 21(4) of the Act read with 36(5) (b) of the Rules and the lorry owner was directed to pay the penalty amount vide proceedings in Roc.No.233/2016-Mines dated 26.05.2016 which is legal and in accordance with law.

6. It is further averred in the counter affidavit that the first respondent after elaborately going into every respect, it was constrained to dismiss the appeal by confirming the order passed by the second respondent vide Roc.No.4782/MM9/2016, dated 13.02.2017 and therefore, it is open to the petitioner to pay the penalty and seek for releasing the vehicle in question. To sum up, he sought for the dismissal of the writ petition.

7. Considered the submissions made on either side and perused the materials available on record.

8. It is not in dispute that the petitioner Company is the owner of the vehicle in question. They transported the granite materials at the request of M/s.Murugan Granites. The petitioner Company has specifically averred that since the vehicle in question was repaired at the time of transporting the granites, there was a delay in reaching the destination point. Though the said fact was elucidated by the petitioner Company, the respondent did not accept the same, but chosen to levy the penalty on the petitioner company on the ground that the petitioner Company has illegally transported the granites. However, the respondent has not filed any First Information Report against the petitioner Company.



9. Considering the fact that the vehicle in question was seized on 07.05.2016, this Court is of the considered view that rather than keeping the vehicle to expose to sun and rain and diminishing its value, to meet the ends of justice, the vehicle be directed to be released subject to certain conditions. Accordingly, the respondents are directed to release the vehicle in question to the petitioner as an interim custody on the petitioner complying with the following conditions:-

- (i) The respondents are directed to take appropriate photographs of the vehicle in question before handing over possession.
- (ii) The petitioner is directed to establish the fact that he is the owner of the vehicle.
- (iii) The petitioner shall not alienate the vehicle in question till the adjudication proceedings is completed.
- (iv) The petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) by way of demand draft to the first respondent for releasing the vehicle in question.
- (v) The petitioner shall give an undertaking before the respondents that he shall not use the vehicle in question for any illegal activities in future.
- (vi) On payment of Rs.1,00,000/- as directed by this Court, the petitioner is permitted to file an appeal 36-C(3) of the Tamil Nadu Minor Mineral Concession Rules, 1959 to the respondents within the period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents are directed to dispose of the same within a further period of four weeks, thereafter.
- (vii) After complying with the conditions, the respondents are directed to release the vehicle in question.

With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To,

1. The Commissioner of Geology and Mining,
(The authority under the
Geology and Mining Act),
Guindy, Chennai-32.



2.The District Collector,
(Authority under Mines and Minerals)
Madurai District.

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+1 cc to Mr.K.C.Maniyarasu , Advocate in SR.No. 65979
+1 cc to Special Government Pleader in SR.No.66264

ssm

AE/KP/SAR1/24.07.2017/5P/5C

Pre-delivery order made in
W.P (MD) No.7098 of 2017
17.07.2017