

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.21909 of 2017

ORDER :

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

“..to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 4 and 5 in seizing the lorry bearing No.AP 21 TW 6989 for worth of Rs.2,50,000/- of the petitioner is illegal, arbitrary and violation of principles of natural justice and consequently direct the respondents 4 and 5 to release the seized the vehicle bearing No.AP 21 TW 6989 of the petitioner on furnishing personal bond for value of the vehicle, and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies (A.P.) for respondents and perused the prayer in the writ petition with supporting affidavit and other material on record.

The learned counsel for the petitioner also relied upon the expression of the Apex Court in Kailash Prasad Yadav v. State of Jharkhand¹, wherein paras 5 and 10 read, thus:

“5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under [Section 3](#) of the Essential Commodities Act, 1955 (for short "the Act") are violated. When a vehicle is used for carrying an essential commodity, it may be seized and ultimately directed to be confiscated in terms of Clause (c) of Sub-Section (1) of [Section 6-A](#) of the Act. Violation of an order made under [Section 3](#) of the Act, therefore, is a pre-condition for passing an order of confiscation.

10. We have to consider the matter from another angle. The order of confiscation is not passed only because it would be lawful to do so. The authorities must arrive at a clear finding in regard to the violation made under [Section 3](#) of the Act. The issues which have been raised before us have not been considered either by the Deputy Commissioner or by the learned Sessions Judge as also by the High Court. The matter is pending before the criminal court. We, therefore, do not intend to delve further into the matter. Keeping in view the facts and circumstances of this case,

¹ AIR 2007 SC 2626

we are of the opinion that it was not a fit case where an order of confiscation could have been passed.”

The interim order passed by this Court on 10.04.2017 in W.P.M.P.No.15419 of 2017 in W.P.No.12415 of 2017 shows that for release of 20 quintals of rice and the vehicles in question therein, the petitioner was directed to furnish immovable property security of its value. In the order dated 15.03.2011 passed by the Single Judge of this Court in W.P.No.181 of 2011, while referring the two expressions of the Apex Court viz., Deputy Commissioner Dakshina Kannada District v. Rudolph Fernandes (2000(3) SCC 306) and Collector of Ganjam v. Ramesh Chander Pandhi (AIR 2009 SC 1850), it was observed that any release of the vehicle to the owner pending Section 6-A proceedings is subject to furnishing of bank guarantee for the amount equal to the value of the vehicle and on the date of seizure of the commodity for the market price of the seized commodity.

Having regard to the above, the Writ Petition is disposed of directing the respondent-Authorities to dispose of Section 6-A proceedings within two months from the date of receipt of copy of this order and the vehicle shall be released for interim custody, subject to bank guarantee for the value fixed by the R.T.A. authorities and filing of an undertaking affidavit not to alienate the vehicle, which is abide by the order of the respondent-Authorities in 6-A proceedings, on submission of explanation if any, by the petitioner. The petitioner is directed to appear before the respondent-Authorities concerned on 10.07.2017 and on such other dates being fixed by the respondent-Authorities.

Consequently, miscellaneous petitions, if any, pending shall stand closed. No costs.

Dr. B.SIVA SANKARA RAO J,

Date:05.07.2017

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