

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.33879 of 2017

ORDER:

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

‘....to issue an appropriate writ, order or direction more in the nature of Mandamus, declaring the action of the respondents 2 & 3 in not releasing the vehicle Tractor & Trailer bearing No.AP 24 U 7192 & AP 24 U 7193 even after paying the penalty amount as assessed by the 3rd respondent as long back as on 7.9.2017 vide challan No.5166, dated 7.9.2017 even after lapse of more than a month as being illegal, arbitrary and is in violation of principles of natural justice and fair play apart from being mandatory stipulations and consequently set aside the same, with a direction to release the Tractor & trailer bearing No.AP 24 U 7192 & AP 24 U 7193 forthwith, and pass such other order or orders as are deemed fit and proper.”

2. I have heard the submissions of *Sri V.Brahmaiah Chowdary*, learned counsel for the petitioner, and of the learned Assistant Government Pleader representing the respondents 2 and 3. I have perused the material record.

3. Learned counsel for the petitioner would submit as follows: ‘The petitioner is the owner of the aforesaid tractor and trailer. The subject vehicles are being used for agricultural operations and transportation of agricultural produce and implements purposes only. On 18.4.2017, when the tractor and trailer were transporting sand for personal use of the petitioner, the 2nd respondent stopped the tractor and trailer and seized the same alleging that sand is being illegally transported without a permit. The tractor and trailer have got necessary and valid permissions from the competent authorities for their use for the purpose of agricultural operations within the areas of Telangana State. All taxes due and payable are paid. The petitioner is having necessary licences, permits and the vehicular documents, as per the transport laws. The tractor and trailer are in the custody of the 2nd

respondent. They are kept at a place which is open to sky. Though the petitioner deposited a sum of Rs.25,000/- towards penalty, on 07.09.2017, vide challan No.5166, as directed by the 3rd respondent, the tractor and trailer were not released. The petitioner is willing to pay the penalty, as per G.O.Ms.No.15, dated 19.02.2015, wherein specific penalties are prescribed and get the tractor and trailer released, as he had no other option. In writ petition with identical facts, viz., W.P.No.4241 of 2014, 39888 of 2015, 15606 of 2016, 36478 of 2016, 14671 of 2017 and 29309 of 2017, this Court passed orders directing the respondents therein to consider the applications for release of the Machinery/ Vehicles in the light of the above referred GO. Hence, the petitioner is seeking similar relief.

4. On written instructions, which are placed on record, the learned AGP appearing for the respondents would submit as follows: The Sub Divisional Magistrate along with other Revenue & Mining officials have intercepted the sand loaded tractors (15 nos.) and found that sand is being transported without any permission and any documents evidencing revenue, if any, paid to the Government. Hence, the tractor and trailer were seized along with the sand load and were kept in the premises of the office of the Sub Collector, Tandur, for safe custody. In the instant case, the petitioner is a habitual offender of illegal lifting of sand and illegal transportation from areas other than the approved sand bearing areas; such un-authorised excavation of sand attracts penalization under TSWALT Act, 2002 and Rules, 2004. The maximum fine/ penalty leviable is Rs.1,00,000/-. Indiscriminate and unscientific extraction of sand from unapproved sand bearing areas will not only affect the environment in the surroundings but also results in depletion of ground water table. Hence, the complaint was lodged under the provisions of WALTA Act. Hence, the case has to be disposed of under the provisions of WALTA Act only.'

5. The complaint of the petitioner is that the above said tractor and trailer were seized while transporting sand for personal use of the petitioner. He

submits that without prejudice to his contentions, he is prepared to seek release of the tractor and trailer, as per the terms of G.O.Ms.No.15, dated 19-02-2015, as he had no other option. His further submission is that though he had deposited a sum of Rs.25,000/- towards penalty, on 07.09.2017, vide challan No.5166, as directed by the 3rd respondent, the tractor and trailer were not released.

6. Per contra, the case of the respondents is that the provisions of the WALTA Act and Rules of 2004 are applicable and that the cases were booked against the petitioners under Rule 27 of the Telangana Water, Land and Trees Rules, 2004 ('the Rules of 2004', for brevity) and that the tractor and trailer will have to be released on compounding of the offences by payment of Rs.1 lakh. Thus, the only contention of the respondents is that unless compounding fee is paid as per Rule 27 of Rules of 2004, the petitioner is not entitled to seek release of tractor and trailer. In that view of the matter, it is necessary to refer to the said rule, which read as under:

27: Compounding of Offences:

(1) The authority or the designated officer or any officer authorized by the Government in this regard, as the case may be, may accept from any person who committed or who is reasonably suspected of having committed an offence punishable under this Act other than the offence punishable under sub-section (2) of Section 35 of this Act.

I. A sum of money not less than Rs.1 lakh by way of compounding of the offence shall be levied in respect of contravention of Sections 10, 14 and Section 27.

II. The order should be communicated in Form 10 appended to these rules and furnish a copy of the compounding order to the offender and submit another copy to the District authority.

(2) When the compounding fees levied and paid by the offender a receipt in Form 11 appended to these rules shall be issued to a person paying the compounding fee.'

Thus, the respondents are insisting on payment of compounding fee though the petitioner is unwilling to admit any alleged offence and compound the alleged offence. The specific case of the respondents as also stated in the written

instructions which are placed on record is that the tractor and trailer were seized at the time of illegal transportation of sand but not at the time of any illegal sand mining. The tractor and trailer were seized only in the course of transportation of sand is the specific case of the respondents. According to their submissions, recourse was taken to Rule 27 of the Rules 2004. The petitioner is denying the alleged illegal transportation of sand and is stating that sand is being transported for personal use and is not willing to compound the offence as envisaged under Rule 27 of the Rules 2004. The concept of compounding requires that the person who is alleged to have committed the offence, or who is reasonably suspected of having done so, must voluntarily come forward to pay the specified sum of money so as to compound the offence. There cannot be a compounding of an offence alleged to have been committed by compulsion. It is to be noted that when vehicles of certain persons/third parties were seized and in some such cases of such persons, penalties were levied as a measure of compounding of offence, all such persons whose vehicles were seized and who were asked to compound the offences under Rule 27 of Rules of 2004, including those persons from whom such amounts were collected, approached this Court by way of filing a batch of writ petitions in W.P.Nos.13257 of 2012 & batch. This Court after considering all the provisions of AP Water, Land and Trees Act, 2002 and Rule 27 of AP Water, Land and Trees Rules 2004, which are *pari materia*, allowed the writ petitions by holding that the seizures of the vehicles of the writ petitioners therein and the consequent imposition of fine/penalty, be it by way of compounding or otherwise, are therefore, found to be without any legal basis; and, this Court, while setting aside the impugned proceedings/ notices directed refund of the amounts collected from the writ petitioners. [See: R.Biksham and ors. V. The District Collector, Mahabubnagar & Ors. (2016(1) ALD 348)]. In view of the aforestated settled legal position, the contentions of the respondents and their insistence on payment of compounding fee by the petitioner herein, even

though the petitioner is unwilling to do so, is *prima facie* untenable and such contentions cannot be countenanced at this stage while considering the request for release of the tractor and trailer of the petitioner herein. Merely on grounds that a crime is likely to be registered or that a crime is registered or that an enquiry or a case is pending before a competent authority or a Court, there need not be a denial of the request for interim custody/ release of the vehicle unless there are compelling circumstances so to do.

7. Having regard to the submissions and without expressing any views on the merits of the matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the tractor and trailer can be given to the petitioner after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers of the Court, wherever and whenever exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to Sun, Rain and inclement/rough Weather without any protection would lead to deterioration of its value and irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or a public office or in the yard of a Court House, it is apposite to give interim custody of the vehicle to an eligible applicant as such a course helps not only in keeping the vehicle in the same good condition but also inures for the benefit of the ultimate successful party. In that view of the matter, there is no need to deny custody of a seized vehicle to its owner or eligible person even during the pendency of investigation or a case or an enquiry with regard to any offences punishable under any enactment. In the case on hand, there are no compelling reasons to not to pass an order giving interim custody of the subject vehicles to the petitioner. Further, the petitioner is prepared to seek release

of the tractor and trailer in accordance with the terms of G.O.Ms.No.15, Industries and Commerce (Mines-I) Department, dated 19.02.2015.

8. On the above analysis and having regard to the submissions and the terms of G.O.Ms.No.15, dated 19.02.2015, the writ petition is disposed of with the following directions:

“The petitioner is directed to submit an application for release of the subject tractor and trailer before the competent authority and the competent authority, within three (03) days from the date of receipt of such application, examine whether the vehicles are used in committing the offence for the first and second time and if so, consider directing release of the tractor and trailer on payment of the prescribed penalty. If, on the other hand, the tractor and trailer are found to have been used in commission of the offence for three or more times, the officer concerned shall consider directing release of the tractor and trailer after deposit of amount in accordance with Rule-12 of G.O.Ms.No.15 dated 19.02.2015 and also on execution of bond(s) along with an affidavit giving consent to produce the seized tractor and trailer as and when required.”

This order shall not preclude the respondent concerned from proceeding in accordance with the procedure established by law either for initiation of any legal action or for launching prosecution for any offence/s, which the law permits.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. Seetharama Murthi, J

06.11.2017

Note:- Issue CC by 07.11.2017
(B/o)
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