

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.35066 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim 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 2 & 3 in not releasing the Petitioner's Machineries/Vehicles. 1) Hydraulic Excavator PC200, Product Code: 20285075U, NL 18090, 2) Hydraulic Excavator PC 200, Product Code:200 85099 E, NL 14372, 3) Sany Sy210C Hydraulic Excavator, Machine S.No.14SEY021101651, 4) HITACHI – Ex120, Machine S.No.12H-23338, 5) TATA- HITACHI, EX-200 LC Serial No.H-06-1888-1482, and 6) Hydraulic Excavator PC 200 Machine S.No.NL 17835 inspite of the petitioners offering to pay the penalty as contemplated under G.O.Ms.No.15, dt.19-02-2015, is wholly illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India and consequently direct the 2nd and 3rd Respondents to release the Petitioner's Machineries/vehicles by collecting penalty as per G.O.Ms.No.15 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. I have heard the submissions of *Sri Palle Sriharinath*, learned counsel for the petitioners, and of the learned Assistant Government Pleader representing the respondents 1 and 2. I have perused the material record.

3. Learned counsel for the petitioners would submit as follows: ‘The petitioners are the respective owners of the aforesaid machines/ vehicles. The petitioners are in possession and enjoyment of the said respective machines/ vehicles since the dates of their respective purchases. The machines/ vehicles have got necessary and valid permissions from the competent authorities for their use for the purpose of extracting mud within the areas of Telangana State. All taxes due and payable are paid. The petitioners are having necessary licences, permits and the vehicular documents in respect of the machines/ vehicles, as per the transport laws and as well as Minor Mineral Concession Rules, 1966. While so, the 2nd respondent/ Station House Officer, Sangareddy Rural PS, stopped and seized the aforesaid

machines/ vehicle, on 05.10.2017, while they are lifting and extracting mud at Byathole village and while being operated by the drivers of the said vehicles. The machines/ vehicles were seized allegedly on the ground that the same were being used in illegal extraction of sand. The vehicles are in the custody of the 2nd respondent. Though the petitioners 2 to 6 approached the Police officer/ 2nd respondent, on 07.10.2017, and narrated all the facts and requested the 2nd respondent to release the vehicles/ machines, he refused to do so. The petitioners are willing to pay the penalty, as per G.O.Ms.No.15, dated 19.02.2015, wherein specific penalties are prescribed and get their machines/ vehicles released, as they have no other option. This Court disposed of writ petitions 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 directing the respondents therein to consider the applications for release of the Machinery/ Vehicles in the light of the above referred GO. Hence, the petitioners are seeking similar reliefs.

4. On written instructions, dated 25.10.2017, which are placed on record, the learned AGP appearing for the 1st respondent submitted as follows: 'The officials of Regional Vigilance & Enforcement Office, Ramachandrapuram, along with the officials of office of the Assistant Director of Mines & Geology, Sangareddy, and officials of offices of the Tahasildars, Kandi & Sangareddy, have jointly conducted raids on illegal transportation of sand. During the checking, the above machines/ vehicles of the petitioners were caught while transporting sand without any way bills/transit forms. Hence, the vehicles were handed over to the Tahasildars, Kandi & Sangareddy for taking necessary action. The Tahasildar, Kandi, has filed complaint with the Station House Officer, Sangareddy Rural Police Station, with respect to 4 Hydraulic Excavators and 2 Hitachies. The complaint was lodged under the provisions of the WALTA Act. Hence, the cases have to be disposed of under the WALTA Act only.'

5. The complaint of the petitioners is that their above said vehicles/ machines were seized while transporting mud by alleging that they are transporting sand. They submit that without prejudice to their contentions, they are prepared to seek release of the machines/ vehicles, as per the terms of G.O.Ms.No.15, dated 19-02-2015, as they have no other option.

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 vehicles will have to be released on compounding of the offences by payment of Rs.1 lakh per vehicle. Thus, the only contention of the respondents is that unless compounding fee is paid as per Rule 27 of Rules of 2004, the petitioners are not entitled to seek release of machines/ vehicles. 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.'

Though the respondents are insisting on payment of compounding fee, the petitioners are 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 vehicles/ machines were seized at the time of illegal transportation of sand but not at the time of any illegal sand mining. All the vehicles/ machines 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 petitioners are denying the alleged transportation of sand and are 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 petitioners herein, even though the petitioners are 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 vehicles/ machines of the petitioners 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 vehicles/ machines 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 machines/ vehicles can be given to the petitioners 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 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 interim 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 vehicle to the petitioners. Further, the petitioners are prepared to seek release of the vehicles 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 petitioners are directed to submit application/s for release of their respective subject vehicles/machines before the competent authority and the competent authority, within three (03) days from the date of receipt of such application/s, examine whether the machines/vehicles are used in committing the offence for the first and second time and if so, consider directing release of the vehicles/machines on payment of the prescribed penalty. If, on the other hand, the machines/vehicles 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 machines/vehicles 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 vehicles/machines 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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