

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.36895 of 2017

ORDER:

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

'..to issue an order, writ or direction, more particularly one in the nature of writ of Mandamus declaring the action of the respondents in seizing the Tractor No.AP 26 TD 2476 & Trailer No.AP 26 TD 2477, of the petitioner without following any procedure under statutes as illegal, arbitrary and violative of Article 19, 21 of the Constitution of India and consequently direct the respondents to release the vehicle from their custody and pass such other order or orders that the Honorable Court may deem fit and proper in the interest of justice.'

2. Heard the submissions of *Sri K.Naveen Kumar*, learned counsel for the petitioner, and of the learned Government Pleader appearing for the respondents 1 to 3. I have perused the material record.

3. The case of the petitioners is this: 'The petitioner is the registered owner of the afore-stated Tractor and trailer. He is using the same for agricultural works and rarely for transporting goods. He is having necessary permits from Transport Authority and also necessary vehicular documents. While so, on 09.10.2017, the SHO, D.V.Sathram Police Station/ 3rd respondent herein seized the said tractor and trailer alleging that sand is being illegally and unauthorisedly transported, though, in fact, no sand was being transported in the prohibited areas as per G.O.Ms.No.42, dated 29.03.2016. The said officer addressed a letter to the 2nd respondent/ Assistant Director of Mines & Geology, Nellore, for taking necessary action. In fact, the petitioner was transporting sand for local house construction from authorised area and the vehicle was seized on the way, at Toll Plaza. No sand excavated from within 500 meters from the ground water structures, bridges, dams, railway lines and

cross-drainage structures was transported. Keeping the vehicle in the custody of the 3rd respondent causes heavy loss to the petitioner. As per amended G.O.Ms.no.42, vehicles engaged in illegal/unauthorised excavation in prohibited areas (i.e., within 500 meters from the ground water structures, bridges, dams, railway lines and cross-drainage structures etcetera), and in transportation of sand outside the State shall be penalized. In view of the free sand policy since 2nd March, 2016, the 3rd respondent cannot seize the vehicle on the ground of transporting sand. Though the petitioner approached the 2nd respondent for release of the tractor and trailer, no decision has been taken. The vehicle is in the custody of the 3rd respondent. Hence, the present writ petition is filed for granting interim custody of the vehicle.'

4. The learned AGP appearing for the 2nd respondent would submit that a show cause notice, dated 16.10.2017, was issued to the petitioner and that the terms of amended G.O.Ms.No.42, dated 29.03.2016, are applicable and that the petitioner is required to give his explanation within (15) days to the show cause notice and that on his failure to do so, action shall be initiated for confiscation of the above vehicles under Rule 9(i)(b) of A.P.MMC Rules, 1966, and that for any vehicle involved in illegal transportation of sand, the punishment is penalty of Rs.1 lakh besides confiscation of vehicle and two years imprisonment for the vehicle operator as well as the owner as per the above Rule.

5. 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 a public office 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. Further, there are no compelling reasons, in the case on hand, to not to pass an order giving interim custody of the subject vehicles to the petitioner.

6. In the result, the Writ Petition is allowed and the competent authority is directed to release and give interim custody of the tractor and trailer bearing No.AP 26 TD 2476 and AP 26 TD 2477 to the petitioner on the petitioner furnishing personal bond and third party surety/ sureties to the satisfaction of the competent authority and on further undertaking that he will not alienate or transfer the subject tractor and trailer in any manner and will maintain them in the same good and road worthy condition without changing any of their features and major parts and shall produce them along with its vehicular documents at a specified place or before a specified authority/ Court as and when directed. This order shall not preclude the petitioner from giving an explanation to the show-cause notice, dated 16.10.2017, said to have been issued to the petitioner. If no such explanation is yet given, the petitioner shall offer an explanation within two weeks from the date of receipt of a copy of this order to enable the competent authority to proceed further in the matter. It is also made clear that either on the petitioner submitting or not

submitting his explanation; the authority concerned is at liberty to proceed further in the matter in strict accord with the procedure established by law.

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

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