

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.40442 of 2017

ORDER:

This Writ petition is filed seeking the following relief:

'....to issue an appropriate writ, order or direction more in the nature of Mandamus, declaring the seizure of the petitioner Heavy Goods Vehicle bearing No. KAO6D 1407 vide Check Report No. 082903 dt. 5.11.2017 by the 3rd respondent as illegal, arbitrary, unjust and violative of Article 19 (1)(g) of Constitution of India and further declare the action of the respondents 2 to 4 in not releasing the same as illegal and arbitrary and consequently direct the respondents 2 to 4 to release the petitioner Heavy Goods Vehicle bearing No. KAO6D 1407 to the petitioner forthwith, and pass such other order or orders as are deemed fit and proper"

2. Learned counsel for the petitioner would submit as follows: - 'When the subject vehicle was transporting colour granite, it was stopped on 05.11.2017 at 11.15 p.m., and the vehicle along with the load was seized for the irregularities, namely, "No Royalty & Bills not covered properly". However, the petitioner produced the bills/transit form generated at 23.37 hours on 05.11.2017. There is an excess load of approximately four cubic meters. In view of the fact that the petitioner is having valid transit forms/bills, the petitioner is entitled for release of the vehicle on payment of the amount due and payable towards the excess load.' He prayed for release of the vehicle with the load after imposing necessary conditions.

3. Learned Government Pleader for Transport, on instructions, strongly opposed for release of the vehicle *inter alia* stating that the *modus operandi* is to transport the mineral without having the necessary transit forms/bills with the vehicle and that as and when the vehicles are intercepted and checked, generate the transit forms thereafter by keeping them in their wallets and that therefore, such transporters like the petitioner are causing loss of revenue to the State exchequer and that as the documents required to be carried while transporting the mineral are not carried with the vehicle, the petitioner is not entitled to the release of the vehicle.

4. A perusal of the check report shows that 'the bills are not covered properly' and therefore, it appears from the check report that the bills are with the vehicle, but they are not covered properly. As per the provisions contained in the relevant laws, the offence is punishable with a minimum fine of Rs.2,000/- and additional amount is collectable at the rate of Rs.14,000/- per cubic meter for excess load together with liability to pay charges for offloading of the excess permissible weight.

5. Having regard to the facts, submissions and above analysis, the Writ Petition is disposed of and the respondents are directed to grant interim custody of the vehicle to the petitioner subject to his depositing Rs.2,000/- and additional amount towards excess load due and payable and payment of offloading charges for excess permissible weight as determined by the Secretary to the Transport Authority. It is also made clear that the petitioner, as undertaken, shall pay any other amounts due and payable in respect of the present subject matter. Further, for release of the subject vehicle, the petitioner shall furnish an undertaking that he would produce the vehicle before the jurisdictional Magistrate or any authority concerned as and when required and shall file ownership certificate and all relevant documents before the concerned Secretary, Regional Transport Authority. However, this order is passed without prejudice to the power of the respondent authority to take legal action against the petitioner in accordance with law.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

Date: 07.12.2017

Note: Issue CC tomorrow

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