

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8770 of 2010
and
MP.No.1 of 2010

G.Johnsly Moses

... Petitioner

vs.

1.The Commissioner of Geology and Mining,
Guindy, Chennai- 600 032.

2.The District Collector,
Kanyakumari District,
at Nagercoil.

3.The Revenue Divisional Officer,
Nagercoil,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent relating to the order in Rc.No.12018/MM5/2006 dated 23.02.2010 confirming the order of the second and third respondents relating to the orders passed in No.83/11.6.5/2006 dated 9.10.2006 and Na.Ka.A4.11618/2005 dated 02.01.2006 respectively, quash the same and direct the respondents to refund the amount of Rs.25,600/- to the petitioner with interest.

For Petitioner : Mr.V.Sanjeevi

For R1 & R2 : Mr.J.Ramesh, AGP

ORDER

The petitioner has come up with this writ petition to quash the order dated 23.02.2010 passed by the first respondent, confirming the orders passed by the respondents 2 and 3 and consequently, direct the respondents to refund a sum of Rs.25,600/- to him, with interest.

2.The facts of the case, in a nutshell, are as under:

The petitioner is running a crusher unit in the name and style of Godwin Blue Metal Stone Crusher at Kozhikottupothai Village, Agastheeswaram Taluk, Kanyakumari District. On 28.12.2005 about 10.30 am, while transporting one unit of quarry rubbles from the leasehold area bearing S.F.No.720 Block II of Marungur Village, Agastheeswaram Taluk, Kanyakumari District in his Tractor bearing Regn.No.TN74 C7118, the third respondent intercepted the vehicle and seized the same with minerals at Manalchadipallam near the quarry, though the driver of the vehicle possessed the required documents, including transport permit, and handed over the same to the authorities concerned. Subsequently, the third respondent issued a notice dated 29.12.2005, calling upon the petitioner to appear for enquiry. Accordingly, the petitioner appeared before the third respondent on 30.12.2005, produced the necessary documents and requested to release the vehicle in question. However, the third respondent by order dated 02.01.2006 imposed penalty of Rs.25,600/- under Rule 36A(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. In order to get his vehicle released, the petitioner remitted the said amount, without prejudice to his right to challenge the order of the third respondent. Thereafter, he preferred an appeal before the second respondent, who, by order dated 09.10.2006, dismissed the appeal by confirming the order of the third respondent. Aggrieved over the same, he filed a second appeal before the first respondent, which was also dismissed, by order dated 23.02.2010. Hence, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that though the petitioner transported the minerals with valid documents, the third respondent seized the vehicle and imposed penalty on him, on the assumption that the minerals were transported by using the same transport permit for the second time. Further, without issuing any show cause notice and providing any opportunity of personal hearing, the third respondent has levied penalty, which was also affirmed by the respondents 1 and 2. Such course adopted by the third respondent is arbitrary, illegal and against the principles of natural justice. Hence, the learned counsel sought to quash the orders impugned herein.

4.On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that the orders impugned herein are in accordance with law and the same cannot be found fault with.

5.Heard both sides and perused the records.

6.Admittedly, the petitioner transported the minerals in question with valid documents. However, without verifying the same in a proper perspective, the third respondent seized the vehicle along with the minerals found therein and imposed penalty on the petitioner on the ground that the transport permit was used for the second time. Challenging the same, the petitioner preferred an appeal, which was dismissed by the second respondent. Again, he went on second appeal, which was also dismissed by the first respondent.

7.It is the case of the petitioner that the time mentioned in the permit for departure of the vehicle from the quarry was 9.00am and the approximate time to reach the destination was 12.00noon on 28.12.2005; and the vehicle was seized at about 10.30am on 28.12.2005 at Manalchadipallam, which was well within the validity period. It is the further case of the petitioner that though the vehicle started at 9.00am on 28.12.2005 from the quarry site, the fan belt in the vehicle was broken and after purchasing a new belt and replacement of the fan belt, the vehicle started to move at about 10.20am on 28.12.2005 and within 10 minutes, the vehicle was seized by the third respondent. Though the petitioner explained the aforesaid facts, the third respondent has not considered the same and levied fine of Rs.25,600/- on the assumption that the transport permit was used for the second time.

8.This Court, considering the submissions made by the learned counsel on either side and upon perusal of the documents filed along with this writ petition, finds no material on record with regard to the alleged irregularities committed by the petitioner, while transporting the minerals in question, since the driver of the vehicle possessed valid documents at the relevant point of time. However, on the assumption, the third respondent levied penalty, which was also affirmed by the appellate authorities i.e., respondents 1 and 2. Such course adopted by the respondents cannot be countenanced, as it is well settled law that penalty cannot be imposed merely on the basis of assumption and presumption and without any basis. Hence, the orders impugned herein are liable to be set aside.

9. Accordingly, the writ petition is allowed by setting aside the orders passed by the respective respondents. Consequently, the respondents are directed to refund the penalty amount paid by the petitioner to the tune of Rs.25,600/-, however, without interest, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Geology and Mining,
Guindy, Chennai- 600 032.
- 2.The District Collector, Kanyakumari District,
at Nagercoil.
- 3.The Revenue Divisional Officer,
Nagercoil, Kanyakumari District.

+1cc to Mr.V.Sanjeevi, Advocate Sr.53113
+1cc to the Government Pleader Sr.53998

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WP.No.8770 of 2010

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