

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION Nos.6131, 6143, 6146 and 6155 of 2018

ORDER:

Heard learned counsel for the petitioner respectively and learned Government Pleader for Mines and Home respectively for the respondents and perused the prayer in the respective writ petitions with supporting affidavits and other material on record including the impugned proceedings of the 2nd respondent-Assistant Director of the Mines and Geology.

2. The prayers in the respective writ petitions read as follows:

(In W.P.No.6131 of 2018)

“.....to issue an order, writ or direction more particularly in the nature of Writ of Mandamus Under Article 226 of the Constitution of India declaring the action of respondents in seizing the Vehicle Tractor bearing No.AP 26 TD 7005 & Trailer No.AP 26 TD 7006 of the petitioner and issuing the Notice bearing No.3199/Vg/2010(5), dated 12.02.2017 by 2nd respondent demanding Rs.1,00,000/- penalty without following any procedure under statutes as illegal, arbitrary and violative of the procedure contemplated under the A.P. Minor Mineral Concession Rules, 1966 & provisions of the Mines and Minerals (Development & Regulation) Act, 1957., and the rules made there under apart from being violation of Article 14, 19(1)(g) and 300-A of Constitution of India in view of the facts and circumstances setout hereunder and consequently direct the respondents to release the vehicle from their custody and pass such other order or orders that the Honourable Court may deem fit and proper in the interest of justice.”

(In W.P.No.6143 of 2018)

“.....to issue an order, writ or direction more particularly in the nature of Writ of Mandamus Under Article 226 of the Constitution of India declaring the action of respondents in seizing the Vehicle Tractor bearing No.AP 03 AP 7716 & Trailer No.AP 03 AP 7717 of the petitioner and issuing the Notice bearing No.3199/Vg/2010(2), dated 12.02.2017 by 2nd respondent demanding Rs.1,00,000/- penalty without following any procedure under statutes as illegal, arbitrary and violative of the procedure contemplated under the A.P. Minor Mineral Concession Rules, 1966 & provisions of the Mines and Minerals (Development & Regulation) Act, 1957., and the rules made there under apart from being violation of Article 14, 19(1)(g) and 300-A of Constitution of India in view of the facts and circumstances setout hereunder and consequently direct the respondents to release the vehicle from their custody and pass such other order or orders that the Honourable Court may deem fit and proper in the interest of justice.”

(In W.P.No.6146 of 2018)

“.....to issue an order, writ or direction more particularly in the nature of Writ of Mandamus Under Article 226 of the Constitution of India declaring the action of respondents in seizing the Vehicle Tractor bearing No.AP 26 AX 0293 & Trailer No.AP 26 TD 1831 of the petitioner and issuing the Notice bearing No.3199/Vg/2010(1), dated 12.02.2017 by 2nd respondent demanding Rs.1,00,000/- penalty without following any procedure under statutes as illegal, arbitrary and violative of the procedure contemplated under the A.P. Minor Mineral Concession Rules, 1966 & provisions of the Mines and Minerals (Development & Regulation) Act, 1957., and the rules made there under apart from being violation of Article 14, 19(1)(g) and 300-A of Constitution of India in view of the facts and circumstances setout hereunder and consequently direct the respondents to release the vehicle

from their custody and pass such other order or orders that the Honourable Court may deem fit and proper in the interest of justice.”

(In W.P.No.6155 of 2018)

“.....to issue an order, writ or direction more particularly in the nature of Writ of Mandamus Under Article 226 of the Constitution of India declaring the action of respondents in seizing the Vehicle Tractor bearing No.AP 26 TA 0868 & Trailer No.AP 26 TA 0869 of the petitioner and issuing the Notice bearing No.3199/Vg/2010(4), dated 12.02.2017 by 2nd respondent demanding Rs.1,00,000/- penalty without following any procedure under statutes as illegal, arbitrary and violative of the procedure contemplated under the A.P. Minor Mineral Concession Rules, 1966 & provisions of the Mines and Minerals (Development & Regulation) Act, 1957., and the rules made there under apart from being violation of Article 14, 19(1)(g) and 300-A of Constitution of India in view of the facts and circumstances setout hereunder and consequently direct the respondents to release the vehicle from their custody and pass such other order or orders that the Honourable Court may deem fit and proper in the interest of justice.”

3. The supporting affidavit averments in almost all the cases is in same line in saying the 2nd respondent-Assistant Director of Mines and Geology having seized the vehicles as if involved in transporting the sand illegally even though the respective petitioners are not transporting the sand from any prohibited area violating any Rules to invoke G.O.Ms.No.42, dated 29.03.2016. It is also the submission that as per Rule 23 sub-section (1) clause (a) of the Andhra Pradesh Water, Land and Trees Rules, 2004 (for short, ‘the Rules’), there is no prohibition for local use in the Villages or towns bordering the

streams for taking sand and even for seizing the vehicles of the respective petitioners in question and thereby the impugned proceedings are unsustainable and liable to be set aside by allowing the writ petitions.

4. The learned Government Pleader from oral instructions opposed the petitions saying the illegal transportation of the sand in question, as point out by the proceedings of the 2nd respondent- Assistant Director of Mines and Geology is prone to take recourse under G.O.Ms.No.42, dated 29.03.2016 and even as per Rule 23(1)(a) of the Rules 2004, there must be prior permission from the very wording and it is not a case of there is any such permission and thereby the writ petitions are liable to be dismissed.

5. There is nothing to show any such permission contemplated by Rule 23(1)(a) of the Rules by any of the respective petitioners in transporting any sand in their respective vehicles in question to claim any special exemption invoking that provision. No doubt, from perusal of the impugned order of the Assistant Director of the Mines and Geology respectively, it is one word order saying directed to all the petitioners to pay Rs.1,00,000/- penalty for following Head of Accounts and the impugned order is without reasons, without application of mind from the facts to the said G.O.Ms.No.42 or Rule 23(1)(a) of the Rules 2004.

6. Having regard to the above, the writ petitions are allowed by setting aside the impugned orders to the extent of to pass reasoned orders if at all the vehicles are liable for confiscation or otherwise to invoke G.O.Ms.No.42, leave about to consider any application of Rule 23(1)(a) of the Rules 2004 supra, if at all apply from any such permission produced.

Miscellaneous petitions pending in all the writ petitions, if any, shall stand closed. No costs.

23rd February 2018

Note :
Issue C.C. by tomorrow.

(b/o)
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Dr. B. SIVA SANKARA RAO, J

