

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.7840 of 2018

ORDER:

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

2. The prayer in the writ petition reads as follows:

“.....to issue writ order or direction especially one in the Nature of Writ of Mandamus declaring the action of the respondents 2 & 3 in seizing the petitioner's lorry bearing No.AP 07 TB 5959 illegal, arbitrary and violative of Article 14, 19(1)(g) and 21 of the Constitution of India and consequently direct the 2nd and 3rd respondents to release the petitioner's lorry and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

3. The supporting affidavit averments of the writ petition are that the 2nd respondent-Assistant Director of Mines and Geology having seized the vehicle as if involved in transporting the sand illegally even though the petitioner is 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 vehicle of the petitioner in question and thereby the impugned proceeding is unsustainable and liable to be set aside by allowing the writ petition.

4. The learned Government Pleader from oral instructions opposed the petition 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 petition is liable to be dismissed.

5. There is nothing to show any such permission contemplated by Rule 23(1)(a) of the Rules by the petitioner in transporting any sand in the vehicle 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 pay Rs.2,00,000/- penalty 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 petition is allowed by setting aside the impugned order to the extent of to pass reasoned orders if at all the vehicle is 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.

Dr. B. SIVA SANKARA RAO, J

9th March 2018

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