

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 39010 of 2018

ORDER:

1) Heard learned counsel for the petitioners, learned Government Pleader for Mines and Geology (AP) and learned Government Pleader for Home (AP). With their consent, the writ petition is disposed of at the admission stage.

2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in seizing the vehicles of the petitioners bearing Nos. AP-31-TH-6858, AP-16-TG-2147, AP-16-TG-2938 and AP-31-TE-5448, without following procedure of law, as illegal and arbitrary.

3) On the allegation that the subject vehicles were transporting sand from the unauthorized reaches/without any permission, during the raid conducted, the officials of the Vigilance and Enforcement Wing of Mines and Geology department seized the vehicles and handed over the same to police to keep them in safe custody.

4) The Assistant Director of Mines and Geology issued show cause notices, calling upon the petitioners to show cause as to why action should not be initiated, under Rule 9 (B)(1) of the A.P. Minor Mineral Concession Rules, 1966, and to collect penalty of rupees one lakh/ two lakhs.

5) In identical circumstance, in I.A.No.1 of 2018 in W.P.No.21809 of 2018, this Court passed an interim order on 16.07.2018, directing release of vehicle on payment of amount and the petitioner therein carried the matter in appeal, vide W.A.No.1014 of 2018, and a Division Bench of this Court, by way of an order, dated 02.08.2018, disposed of the said Writ Appeal, modifying the order, by directing release of vehicle upon the appellant furnishing bank guarantee or security. A copy of the same is placed on record. Paragraph Nos.5 to 8 of the said order reads as under:

“5. From a perusal of sub-rule (1) of Rule 9-B, it is clear that if the appellants are found guilty of the offence, they are liable to pay a penalty of Rs.1,00,000/- apart from the confiscation of the vehicle and the imprisonment of the owner. In such circumstances, a *via media* has to be struck, especially while considering an application for an interim order. The learned Judge thought that directing payment of Rs.75,000/- per vehicle may be a good interim solution.

6. But the contention of the appellants is that ultimately if they are proved not guilty, the amount paid by them will remain with the respondents without bearing any interest. The vehicles cannot also to be allowed to remain with the respondents, as they may get damaged due to non-use.

7. We think the objections of the appellants are fairly well founded. While the interests of the revenue are to be protected, the vehicles of the appellants cannot also be allowed to get damaged due to non-use. Therefore, we are of the view that directing the appellants to furnish bank guarantee or security for the above amount, may served the ends of justice.

8. Accordingly, the writ appeal is ordered modifying the order of the learned Judge, directing the respondents to release the tractors cum trailers of the appellants, upon the appellants furnishing bank guarantee or security to the tune of Rs.75,000 per vehicle, in favour of the 3rd respondent, viz., the Assistant Director of Mines and Geology. There shall be no order as to costs”.

7) Following the above said order, dated 02.08.2018, passed by a Division Bench of this Court in W.A.No.1014 of 2018 and for the reasons recorded therein, there shall be a direction to the respondents to give interim custody of the three vehicles bearing Nos. AP-31-TH-6858, AP-16-TG-2147, AP-16-TG-2938 to petitioners 1 to 3, subject to production of the relevant documents, to prove ownership of the subject vehicles, and subject to furnishing bank guarantee or security for the amounts indicated in the show cause notices. Till the conclusion of the proceedings/prosecution, petitioners 1 to 3 shall also give an undertaking that they will not alienate the vehicles, will not create any third party rights, will not remove major parts of the vehicles and that the vehicles will be produced as and when required during the course of proceedings. It is also made clear that this order holds good till the conclusion of the proceedings/prosecution. Thereafter, it is open for the respondents herein to proceed in accordance with law.

8) Insofar as the fourth vehicle bearing No. AP-31-TE-5448, the same relates to some other proceedings. Hence, I am not inclined to consider the same.

9) Accordingly, the writ petition is disposed of. Miscellaneous petitions, pending if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

02.11.2018
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