

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 1630 OF 2017

Date:04.09.2019

Between:

Nerudha Lingha Rao S/o Nerudha Sattaiah
Age 41Yrs Occ Business
Regd Owner of HMV Goods Carriage
Bearing NoAP28TD2979
H No 21 130 Yellamma Banda
Nizampet V Quthibullapur M
RangaReddy Dist

.....Petitioner

And

The State of Telangana Rep by Its Spl Chief Secretary
Transport Secretariate Hyderabad & others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NO. 1630 OF 2017****ORDER:**

Heard learned counsel for petitioner, learned Government Pleader for Transport, learned Government Pleader for Industries, learned Government Pleader for Home and learned Government Pleader for Mines and Geology.

2. Petitioner claims to be owner of goods transport vehicle bearing registration No. AP 28 TD 2979 and is involved in the business of transportation of sand. According to petitioner, on 9.1.2017 while petitioner was transporting sand with valid permit, the Motor Vehicles Inspector of Warangal Range intercepted the vehicle on the allegation of overload of 6740 kgs and handed over the vehicle to the Deputy Transport Commissioner, Warangal. Petitioner alleges that though he filed application to the Regional Transport Authority, Medak at Sangareddy to release the vehicle under Rule 448B of the Telangana Motor Vehicles Rules, the said application was not accepted and returned without any endorsement and vehicle is not released. Petitioner fairly admits that he loaded excess quantity of sand as there was no proper weight bridge at the loading point and due to ignorance of the driver of the vehicle but same was not deliberate. This writ petition is filed challenging the seizure of the vehicle and with prayer to release the same.

3. On 18.1.2017 this Court granted interim direction to release the vehicle subject to fulfilment of the conditions. It appears vehicle was released in pursuant to the interim orders of this Court. Along with writ petition paper book, petitioner enclosed copy of the representation dated 10.1.2017 and photo copy of demand draft for Rs.25/- made towards prescribed fee for filing application for release of the vehicle.

4. The issue of seizure of vehicle, the remedy that is available to the person aggrieved by the seizure, the procedure to be followed while seizing the vehicle, further proceedings and measures required to be taken to release the vehicle are all considered by this Court in W.P.No. 1635 of 2017 and batch dated 7.8.2019.

5. This Court held that writ petitions directly filed without availing the remedy under Section 207 (2) of the Motor Vehicles Act, 1988 are not maintainable and relegated the petitioners therein to avail the remedies .

5.1. In paragraph 58 the Court held as under:

“58. On due consideration of various provisions of the Act, 1986 and Act, 1984 imposing fine on finding guilt is not the only aspect. The statute envisages special mechanism to deal with violations on overload. It is not a simple case of releasing vehicle on payment of fine. Once a vehicle is found with excess load, the excess load has to be removed. Such load has to be carted away in a separate vehicle by the owner of the offending vehicle. Carrying excess load than permissible would damage vital parts of the vehicle and can develop mechanical problems which may be fatal. Repeatedly overloading also would impact vehicles durability. The road worthiness of the vehicle has to be assessed; the competency of the driver also to be verified before permitting the owner to use the vehicle. It is also necessary to ascertain as to whether the vehicle was involved in similar or in any other offence. According to Rule 184 (2)(i) of A.P. Motor Vehicle Rules, 1989, if history sheet of the owner is not clean and contains more than six entries relating to offence of overload and other offences, he can refuse to grant renewal. It is also relevant to note that wide options are available to competent authority to deal with offending vehicle including suspension and cancellation of driving licence/permit/registration. He is also required to examine whether by such conduct the owner/driver/person-in-charge of the vehicle violated provisions of Act, 3 of 1984 and whether prosecution can be launched under that Act. These are all matters best left to the discretion of the competent authority. Thus, statutory scheme impels the Court to hold that it is not merely a case of not availing alternative remedy, writ petition cannot be instituted straight away as a matter of course the moment vehicle is seized on the allegation of overload and aggrieved persons have to avail statutorily engrafted remedies”.

5.2. Paragraph 63 reads as under:

“63. The writ petitions are disposed of with the following findings and directions:

- (i) Ordinarily, writ petitions against seizure of vehicle on the allegation of violation of Motor Vehicles Act, 1988 is not

maintainable. Owner /person in charge/ driver of the offending vehicle has to avail statutorily engrafted remedies before seeking to initiate writ proceedings.

- (ii) On seizure of vehicle under Section 207 (1) of the Act, owner/ person-in-charge/ driver can file application under Section 207 (2) read with Rule 448 (B) of the Telangana State Motor Vehicles Rules. It is for the Secretary, Road Transport Authority to consider the application and to pass appropriate orders as warranted by law. If he agrees to release the vehicle he can impose appropriate conditions. However, it is necessary to assess the road worthiness of the vehicle before it is released and a certificate be issued to that extent. Such course is in larger public interest.
- (iii) The proceedings of seizure of a motor transport vehicle should be video recorded. The CCTV footage capturing the movement of the offending vehicle wherever available should be obtained and be made part of the case record. The Government shall prescribe procedure of video recording of seizure and collection of video footage as evidence.
- (iv) Apparently, the primary grievance on not availing remedy under Section 207 (2) is delay in processing the applications and delay in the decisions. To expedite the process of decision making under Section 207 (2), the applications can be accepted through online web portal. For this purpose online web portal/web page on existing portal / a separate mobile application can be exclusively created to process the applications online and to take decisions thereon. The hearings can be conducted through video conference mode. The applicant need not come to the office of Secretary/ designated authority. Video conferencing facilities can be established at designated places. The Government shall prescribe, within six (6) weeks from date of receipt of judgment to stipulate procedure to file applications praying to grant interim custody of the vehicle and time frame to dispose of such applications. Ordinarily, such applications should be disposed of within one week.
- (v) Court is informed that pursuant to interim orders, vehicles were already released. In the peculiar facts of these cases Court is not directing authorities to take back possession of the vehicles. However, this does not come in the way of launching prosecution and penalizing the owner/driver/person in charge of the vehicle. Amount paid as per interim orders shall be adjusted towards fine that may be imposed, if found guilty. It is also open to owner/driver/ person-in-charge to file application under Section 200 to compound. It is also open to authorities to initiate prosecution under Act, 3 of 1984. Similar system and procedure to applications under Section 207 (2) be evolved to applications under Section 200.
- (vi) Even if owner/driver/person-in-charge applies to compound the offence and such application is allowed, before permitting the vehicle to ply on the roads, road worthiness of the vehicle has to be assessed and certified. Owner/driver/person-in-charge can use such vehicle on the public roads only if such a certificate is issued.
- (vii) The authorities entrusted with the responsibility to enforce the provisions of the 'Telangana State Sand Mining Rules, 2015' shall ensure completion of confiscation proceedings within the time frame, not exceeding three months and collection of fine as prescribed in the Rules on the excess load transported and confiscation of sand as per the provisions of the Rules. They shall also report to the Secretary, Road Transport Authority the action taken under the Rules, 2015. If petitioners have any grievance on levying of penalty under the Rules, 2015, it is open to them to file application and the same shall be acted upon and suitable reply be furnished expeditiously.
- (viii) Government and the Commissioner for Transport shall take immediate steps to ensure, by utilizing information technology platform, to put in place mechanism for online monitoring of offences committed by the transport vehicles/goods, as well as passenger vehicles, which is accessible to Police, officials of

Industries Department as well as officials in transport department and whenever if owner/driver repeats the offence, the same should be reflected online and consequential action should be taken.

- (ix) The prosecution against owner/person-in-charge/ driver of the offending motor vehicle has to be in a fixed time frame. The State Government may formulate guidelines fixing time frame. Such guidelines be notified within three months from the date of receipt of the copy of the judgment”.

6. The said findings and directions are affirmed in this writ petition and writ petition is accordingly disposed of. In the instant case, though petitioner claims that he preferred application under Section 207 (2) of the Motor Vehicles Act, 1988 by paying challan, there is no proof of acknowledgement. However, as a copy of the same is filed in the writ petition paper book and vehicle is already released, it is open to the competent authority to take further proceedings strictly in accordance with the directions issued by this Court in W.P. No. 1635 of 2017 and batch. It is needless to observe that this order does not come in the way of taking action against the petitioner for other violations, if any committed by petitioner in maintenance of the vehicle and transportation of goods. Miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

Date: 04-09-2019
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