HONOURABLE SRI JUSTICE P.NAVEEN RAO

W.P.Nos.952, 2287, 2303, 6748, 8780, 9452, 9959, 11446, 15611, 22171, 26365, 26367, 26368, 2665227027, 27441, 27580, 29963 of 2017, 38068, 41083, 41256, 47609 of 2018, 807, 7962, 10192, 10946, 12044, 12088, 12836, 12852, 13248, 13250, 13317, 13319, 13380, 13772, 13813, 13876, 13881, 13910, 14077, 14131, 14147, 14587, 14715, 14812 15044, 15415, 15549, 15566, 15735 of 2019

Date: 29.08.2019

W.P.No.952 of 2017 :

Between:

Srisailam Beesam S/o.B.Muthaiah,
Aged about 29 yrs, Occu : Business,
R/o.H.No.4-12-50/29, Dwarakamai Nagar,
Vanasthalipuram, Hayathnagar,
Ranga Reddy District, Telangana.

.....Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Transport, Roads & Buildings (TR.I) Department,
Secretariat Building, Hyderabad & others.

.....Respondents

The Court made the following:

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

W.P.Nos.952, 2287, 2303, 6748, 8780, 9452, 9959, 11446, 15611, 22171, 26365, 26367, 26368, 26652, 27027, 27441, 27580, 29963 of 2017, 38068, 41083, 41256, 47609 of 2018, 807, 7962, 10192, 10946, 12044, 12088, 12836, 12852, 13248, 13250, 13317, 13319, 13380, 13772, 13813, 13876, 13881, 13910, 14077, 14131, 14147, 14587, 14715, 14812 15044, 15415, 15549, 15566 and 15735 of 2019

COMMON ORDER :

These writ petitions are filed challenging the seizure of motor vehicles under the Motor Vehicles Act, 1988 (for short 'the Act') on the ground that motor vehicles were carrying excess load of sand or other goods than permissible.

2. These writ petitions are instituted straight away even before prosecution was launched and without applying to the designated authority under sub section 2 of Section 207 for release of the vehicle. By virtue of the interim orders passed by this Court, the vehicles are released straightaway even before prosecution was launched by accepting the fine stipulated by the Court by mechanically referring to the penalties that can be imposed under Section 194.

3. The issue raised in these writ petitions was elaborately considered by this Court in W.P. 1635 of 2017 and batch dated 7.8.2019. 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."

4. 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.

(viii) 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.

(ix) 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.

(x) 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."

5. Learned counsel for petitioners, learned Government Pleader for Transport, learned Government Pleader for Industries, learned Government Pleader for Home and learned Government Pleader for Mines and Geology fairly submit that the issue in these writ petitions is covered by the judgment rendered in W.P.No.1635 of 2017 and batch dated 7.8.2019.

6. The said findings and directions are affirmed in these writ petitions and writ petitions are accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO, J

29th August, 2019
Rds