

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18254 OF 2019

Date: 23.08.2019

Between:

Sri Gouni Raj Kumar S/o.G.Pentaiah,
Aged 45 yrs, Occu : Business,
R/o.H.No.4-4-101, Gadi, Zaheerabad,
Zaheerabad Mandal, Sangareddy District

.....Petitioner

And

State of Telangana,
Rep., by its Principal Secretary,
Transport Department, Secretariat Building,
Hyderabad & others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 18254 OF 2019

ORDER:

This writ petition is filed challenging the seizure of goods transport motor vehicle bearing registration No.TS 15 UC 1987 under the Motor Vehicles Act, 1988 (for short 'the Act') on the ground that Motor Vehicle was carrying excess load than permissible.

2. Heard learned counsel for petitioner and learned Government Pleader for Transport.

3. Against order of seizure remedy of appeal is provided under Section 207 (2) of the Act. Without availing the said remedy directly this writ petition is instituted.

4. The issue of maintainability of writ petition without availing remedy of appeal was elaborately considered by this Court in W.P.No.1635 of 2017 and batch and rendered judgment on 07.08.2019.

5. Relevant paragraphs are 58 and 63. They read as under

(i) Paragraph No.58 of the said judgment reads as under :

“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.”

(ii) Paragraph 63 of the said judgment, to the extent relevant, reads as under :

- (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.
- (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.

- (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.

6. Thus, the writ petition filed without availing statutory remedy of appeal is not maintainable and is accordingly dismissed. It is open to the petitioner to avail remedy of appeal. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Date:23.08.2019
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