

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO. 24289 OF 2020

Between:

1. Smt. Daitha Sravanthi, W/o. Sampath Kumar, Aged about 30 years, Occ: Housewife, R/o. H.No. 3-2-76, Uppu Gadda, Vemulawada, Karminagar - 505302.
2. Rabbari Ramlal, S/o. Rabbari Hemaji, Aged about 47 years, Occ: Business, R/o. H.No. 8-2-76, Subramanyam Nagar, Vemulawada, Karimnagar - 505302.

...PETITIONERS

AND

1. The State of Telangana, Rep. by its Principal Secretary, Revenue (Excise) Department, Secretariat, Hyderabad.
2. The Deputy Commissioner of Prohibition and Excise, Karimnagar Division, Karimnagar.
3. The Station House Officer, Vemulawada Prohibition and Excise Station, Vemulawada, Karminagar.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the in action of Respondent No.2 in not directing the Respondent No.3 to release the Acura 4G WEAS & KS & DRUMC vehicle bearing Registration Number TS 23 8946 and Hero Honda splendor vehicle bearing Registration Number AP 15 AV 9830 seized in COR Dated 19.10.2020 with COR No.66 of 2020, inspite of petitioners readiness to furnish the third party surety, as being illegal, and arbitrary consequently direct the Respondent No.2 to order for release of the vehicles to the Petitioners.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No.2 to release the Acura 4G WEAS & KS & DRUMC vehicle bearing Registration Number TS 23 8946 and Hero Honda splendor vehicle bearing Registration Number AP 15 AV 9830 seized in COR Dated 19.10.2020 with COR No.66 of 2020 pending disposal of the main Writ Petition.

Counsel for the Petitioner: SRI RAVINDER REDDY MUPPU

Counsel for the Respondents: AGP FOR PROHIBITION AND EXCISE

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.24289 of 2020

ORDER:

Heard learned counsel for the petitioners and learned Assistant Government Pleader for Prohibition and Excise.

2. This writ petition is filed praying to direct respondents to release Activa 4G WEAS & KS & DRUMC bearing registration No.TS 23 8946 belonging to the 1st petitioner which was manufactured in the year 2017 and Hero Honda Splender bearing registration No.AP 15 AV 9830 belonging to the 2nd petitioner which was manufactured in the year 2011 were seized on the allegation of illegal transportation of Jaggery and Alum.

3. According to State Government, producing illicit liquor and its distribution is prohibited. According to the State, consumption of liquor is *per se* harmful to health of a person and consumption of spurious liquor is more harmful and can result in instantaneous death. The officials in their endeavour to thwart any attempt to manufacture illicit liquor, seize the commodities and vehicle involved in illegal transportation. After seizure of the vehicle, confiscation proceedings are taken up and if the allegations are proved, the vehicle can be confiscated.

4. The Telangana Prohibition Act, 1995 and The Telangana Excise Act, 1968 regulate all aspects of liquor in the State of Telangana, including manufacture, distribution and consumption.

5. By placing reliance on several decisions of this Court, learned counsel for petitioners prayed to allow the writ petition directing the respondents to release the vehicles subject on deposit

of an amount of ₹.10,000/- and Rs.5000/- respectively and compliance of further directions issued by this court in several writ petitions.

6. The statement of learned counsel for petitioners that similar matters are disposed of with conditions, including furnishing fixed deposit/bank guarantee as the case may be, is not disputed by the learned Assistant Government Pleader. However, he only emphasises that higher amount of fixed deposits should be directed to be furnished by the petitioners before seeking to release the vehicles. He further submits that the competent authority to deal with confiscation proceedings is Deputy Commissioner and he alone is competent to release the vehicles pending completion of confiscation proceedings. He therefore submits that direction be given to the petitioners to file applications before the Deputy Commissioner praying to grant interim custody of the vehicle.

7. Having regard to the consistent view taken by this Court, this Court on similar issue, passed detailed orders in W.P. Nos.14801 and 14811 of 2020 dated 8.9.2020. Following the same, this writ petition is disposed of with following directions:

(i) Petitioners are granted liberty to file applications to the Deputy Commissioner (2nd respondent) to grant interim custody of the vehicles.

(ii) If such applications are filed, pending final orders to be passed in confiscation proceedings, 2nd respondent is directed to release Activa 4G WEAS & KS & DRUMC bearing registration No.TS 23 8946 belonging to the 1st petitioner and Hero Honda Splender bearing registration No.AP 15 AV 9830 belonging to the

2nd petitioner, on petitioners furnishing fixed deposit receipts as proof of opening fixed deposit accounts for an amount of ₹.10,000/- (Rupees Ten Thousand only) and Rs.5000/- (Rupees Five Thousand only) respectively.

(iii) Petitioners are further directed not to encash the fixed deposit or create lien or mortgage on the fixed deposit till the conclusion of confiscation proceedings.

(iv) The petitioners shall produce original R.C. Book of the vehicles at the time of seeking release of the vehicles.

(v) Petitioners shall furnish undertaking that they will not transfer or alienate the subject vehicles to third party in any manner and will maintain the vehicles in the same good roadworthy condition without changing its major parts and features.

(vi) Petitioners should produce the vehicles as and when directed by the concerned Court or competent authority.

No costs. Miscellaneous petitions, if any pending, stand closed.

SD/-N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

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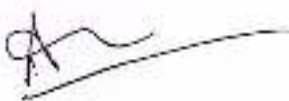
SECTION OFFICER

To,

1. The Principal Secretary, Revenue (Excise) Department, State of Telangana, Secretariat, Hyderabad.
2. The Deputy Commissioner of Prohibition and Excise, Karimnagar Division, Karimnagar.
3. The Station House Officer, Vernulawada Prohibition and Excise Station, Vernulawada, Karimnagar.
4. One CC to Sri Ravinder Reddy Muppu, Advocate [OPUC]
5. Two CCs to GP for Prohibition and Excise, High Court for the State of Telangana at Hyderabad. [OUT]
6. Two CD Copies.

Along with a Copy of the Order dated 08.09.2020 in W.P.No. 14801 and 14811 of 2020.

MP



HIGH COURT

DATED:31/12/2020

ORDER

WP.No.24289 of 2020



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

8
MPA
05/01/2021

HONOURABLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NOS. 14801 & 14811 of 2020****COMMON ORDER:**

Heard learned counsel for petitioners and learned Government Pleader for Prohibition and Excise.

2. These two writ petitions are filed praying to direct respondents to release their motor vehicles, i.e., Auto Rikshaw bearing registration No. TS 26 T 6451 in W P No. 14801 of 2020 and Goods Carriage vehicle bearing registration no. AP 03 TE 2277 in Writ Petition No. 14811 of 2020. These two vehicles were seized on the allegation that the said vehicles were carrying large quantity of jaggery and alum intended to make illicit liquor.

3. According to State Government, producing illicit liquor by using jaggery and alum and other substances and its distribution is prohibited. According to the State consumption of liquor is *per se* harmful to health of a person and consumption of spurious liquor is more harmful and can result in instantaneous death. Therefore, whenever the Police and Excise Officials come across transportation of jaggery and alum, more particularly in large quantities, they suspect that such transportation is intended to manufacture illicit liquor. In their endeavour to thwart any attempt to manufacture illicit liquor, they seize the commodities and vehicles involved in transportation. After seizure of the vehicles, confiscation proceedings are taken up and if the allegations are proved, the vehicle can be confiscated.

4. The Telangana Prohibition Act, 1995 and The Telangana Excise Act, 1968 regulate all aspects of liquor in the State of Telangana, including manufacture, distribution and consumption.

5. Section 7-A¹ of the Act, 1995 prohibits selling, buying and consumption of liquor otherwise than in accordance with the provisions of the Act, 1995 and Act, 1968. Section 2 of the Act, 1995 defines various terms used in the Act. According to sub section 1 '**Arrack**' means country liquor including arrack brewed, coloured, flavoured or spiced. According to Sub Section 7 "**Liquor**" includes (a) spirits of wine, denatured spirits methylated spirits and rectified spirits Beer, toddy and every liquid consisting of or containing alcohol and (b) any other intoxicating substance which the Government may by, notification, declared to be liquor for the purpose of this Act. However, the word "**Alcohol**" is not defined in the Act, 1995 and in the Act, 1968.

6. Section 2 of the Act, 1968 defines various words and terms used in the Act. According to clause-1, "**Arrack**" includes all liquor produced or manufactured in India and supplied by the Government, other than Foreign Liquor and Indian Made Foreign Liquor. According to clause-19 "**intoxicant**" means any liquor as defined in clause (21). In Clause 21 "**liquor**" is defined. It includes, -(a) Spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) Any other intoxicating substance which the Government may by notification, declare to be liquor for the purposes of this Act. This definition is similar to the definition provided in Act, 1995.

7. The Act, 1968 is comprehensive legislation on the subject and deals with all aspects concerning Alcohol. Chapter IV deals with 'Manufacture, possession and sale'. According to Section 13, no person shall (a) manufacture or collect an intoxicant; (b) cultivate hemp plant; (c) tap an excise tree or draw toddy from any such tree; (d) construct or work distillery or brewery; (e) bottle liquor for sale; or (f) use, keep or have in his possession, any materials, stills, utensils, implements or

¹ Prohibition of production etc., of arrack. - The production, manufacture, storage, possession, collection, purchase, sale and transport of arrack is hereby prohibited.

apparatus, whatsoever for the purpose of manufacturing any intoxicant, other than toddy, except under the authority and subject to the terms and conditions of a licence. It is seen that Sub-Section (f) has wider import and encompasses various aspects of manufacture and possession of liquor.

8. Chapter VI of the Act, 1968 deals with 'Offences and Penalties'. For the purpose of this case, Sections 41, 45², 46 and 46-A³ are relevant. Section 41 provides for imprisonment for contravention of any of the provisions of Act, 1968, or of rule, notification or order made, issued or passed there under and not otherwise provided for in the Act, 1968.

9. Section 45 provides that whenever an offence has been committed, which is punishable under Act, 1968 the things mentioned in Section 45 are liable for confiscation. Section 46 mandates the authority competent to seize the items mentioned in Section 45 to produce before the Deputy Commissioner of Prohibition and Excise. On production of the seized property, the Deputy Commissioner is required to conduct proceedings for confiscation and if he is satisfied that an offence is committed under the Act, he may order for confiscation of the property seized. The Deputy Commissioner is also authorised to conduct public auction or dispose of the property so confiscated. Against the order of confiscation, under Section 46-C⁴ remedy of appeal is provided.

² 45. Whenever an offence has been committed, which is punishable under this Act, the following things shall be liable to confiscation, namely:-(1) any intoxicant, materials, still, utensil, implements, or apparatus in respect of, or by means of, which, such offence has been committed; (2) any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or brought along with, or in addition to, any intoxicant liable to confiscation under clause (1); and (3) any receptacle, package or covering in which anything liable to confiscation under clause (1) or clause (2), is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same:

³ 46A. No order of confiscation of any property shall be made under section 46 unless the person from whom the said property is seized, -(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; and (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice.

⁴ 46C. Any person aggrieved by an order passed by the Deputy Commissioner of Prohibition and Excise under section 46, may within sixty days from the date of passing such order, appeal to the Commissioner of Prohibition and Excise, who may after giving reasonable opportunity to the appellant pass such order as he deems fit.

10. Thus, from the scheme of the Act noted above, if the officer of the Excise Department or Police Department suspects that a person is found to be in possession of any material or is transporting any material which is meant for use to manufacture illicit liquor, he can seize the vehicle and/ or goods and thereafter confiscation proceedings would be conducted. However, the Act has not provided mechanism to ventilate the grievances against the alleged seizure of vehicle or goods and to seek release of the vehicle or goods pending confiscation proceedings.

11. The stark reality is no sufficient number of warehouses/ stock yards are available, where vehicles can be parked and protected from the extreme weather conditions as well as theft of vehicles/parts of the vehicles. It is also a stark reality that there is tardy progress in the confiscation proceedings and till the confiscation proceedings are concluded, the seized vehicles/goods are exposed to extreme weather conditions and greatly diminish their usability. Therefore, whenever a vehicle is seized, the primary concern of the owner of the vehicle is about its safety and roadworthy condition when the vehicle is released.

12. Since there is no other redressal mechanism, the owners of the motor vehicles institute writ petitions praying to direct concerned authority to release the vehicles pending confiscation proceedings. The volume of the writ petitions in this branch of law would show the magnitude of the problem. Having regard to the practicalities noticed above, this Court invariable grants directions to release the vehicles/goods imposing certain conditions, including furnishing fixed deposit or furnishing bank guarantee for the specified amount. Fixing the amount depends on the type of vehicle, year of manufacture etc and also restraining the owner of the vehicle from creating third party interest or selling the vehicle till conclusion of confiscation proceedings.

13. By placing reliance on several decisions of this Court, learned counsel for petitioners prayed to allow the writ petitions directing the respondents to release the vehicles subject to compliance of directions issued by this court in several writ petitions. In W.P. 14801 of 2020 counsel for petitioner offered to deposit an amount of ₹.75,000/- for release of Auto Rikshaw and in W.P. 14811 of 2020 counsel for petitioner offered to deposit an amount of ₹.1,50,000/- for release of goods transport vehicle and to comply with other conditions as imposed in similar matters.

14. The statement of learned counsel for petitioners that similar matters are disposed of with conditions, including furnishing fixed deposit/bank guarantee as the case may be, is not disputed by the learned Government Pleader. However, he only emphasises that higher amount of fixed deposit should be directed to be furnished by the petitioners before seeking to release the vehicles.

15. Having regard to the consistent view taken by this Court, petitioners are also entitled to relief of directing respondents to release their vehicles. The Writ Petitions are disposed of, with the following directions :

(i) Pending final orders to be passed in confiscation proceedings, respondents are directed to release the Auto Rickshaw bearing registration No.TS 26 T 6451 in W.P.No.14801 of 2020 on petitioner furnishing fixed deposit receipt as proof of opening fixed deposit account for an amount of ₹ 75,000/- and Goods Carriage-vehicle bearing registration no. AP 03 TE 2277 in W.P.No.14811 of 2020 on petitioner furnishing fixed deposit receipt as proof of opening fixed deposit account for an amount of ₹ 2,50,000/-.

(ii) Petitioners are further directed not to encash the fixed deposits or create lien or mortgage on the fixed deposits till the conclusion of confiscation proceedings.

(iii) The petitioners shall produce original R.C. Books of the vehicles at the time of seeking release of the vehicles.

(iv) Petitioners shall furnish undertakings that they will not transfer or alienate the respective vehicles to third party in any manner and will maintain the vehicles in the same good roadworthy condition without changing its major parts and features.

(v) They should produce the vehicles as and when directed by the concerned Court or competent authority.

17. The flood of litigation on this subject is solely because no redressal mechanism is provided against and release of vehicles and goods. The flow of litigation can be reduced, if not avoided, if an intra-departmental mechanism is created to redress the grievance of the owner of the vehicles/goods.

18. Having regard to the volume of litigation that is instituted in this Court adding to the huge pendency of cases before this Court, before parting with these cases, this Court deems it necessary to make following directions:

19. The Principal Secretary, Prohibition and Excise Department and Commissioner for Prohibition and Excise:

(a) shall examine the desirability of creating intra-departmental redressal mechanism where owner of the seized vehicle or goods can prefer an appeal against the seizure pending confiscation proceedings and desirability to release the vehicles/goods with appropriate conditions as deemed fit and proper;

(b) shall consider to prescribe time line for expeditious conclusion of the confiscation proceedings;

(c) shall formulate guidelines for disposal of the appeals and confiscation proceedings by using Information Technology platform and by creating On-line portal for redressal of such grievances including the possibility of considering these matters through Video Conference mode.

20. It is appropriate to note that any endeavour made or remedial steps taken in this regard will avert flooding of cases before this Court and would ensure expeditious, cost effective redress to aggrieved person.

Miscellaneous petitions, if any pending, stand closed.

P.NAVEEN RAO,J

DATE: 08.09.2020

TVK/kkm