



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.13577 of 2021

and

W.M.P (MD) .No.10510 of 2021

(Through Video Conference)

Gunamurugan

.. Petitioner

-Vs-

The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Ramanathapuram District.

..Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned confiscation order in 64-01/முறுதல்/த/கா/க/ ம/ஷ/அ/ம/ இராம/2021 dated 08.05.2021 passed by respondent and quash the same as illegal and consequently directing the respondent to release the petitioner's Motor Cycle vehicle bearing registration No.TN-65-AE-6981 within a stipulated time to be fixed by this Court.

For Petitioner

: Mr.G.V.Vairam Santhosh

For Respondents

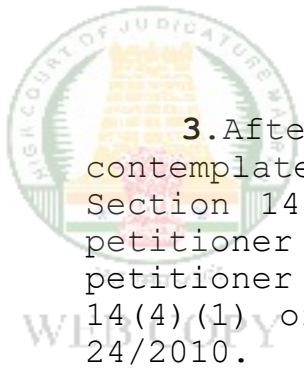
: Mr.D.Ghandiraj

Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the impugned confiscation order in 64-01/முறுதல்/ த/கா/க/ ம/ஷ/அ/ம/ இராம/2021 dated 08.05.2021 passed by respondent and quash the same as illegal and consequently directing the respondent to release the petitioner's Motor Cycle vehicle bearing Registration No.TN-65-AE-6981 within a time frame.

2.That the petitioner is the owner of the vehicle that is, two wheeler motorcycle, bearing Registration No.TN-65-AE-6981. The said vehicle was intercepted and seized in connection with an alleged offence in Crime No.242 of 2020 by the Inspector of Police, Thriuppullani Police Station, Ramanathapuram District, for the alleged offence punishable under Sections 4(1)(a) of the Tamil Nadu Prohibition Act, on 14.08.2020.



3. After seizing of the vehicle, as per the procedure contemplated under the Tamil Nadu Prohibition Act, especially under Section 14, the respondent had issued a show cause notice to the petitioner on 16.09.2020 wherein show cause was sought for from the petitioner as to why vehicle shall not be confiscated under Section 14(4)(1) of the Tamilnadu Prohibition Act, as per the amended Act 24/2010.

4. In this context, it is the case of the petitioner that, explanation had been given, despite the same without considering the explanation in proper perspective, the respondent has passed an order of confiscation by impugned order dated 08.05.2021. Challenging the said order of confiscation, the petitioner has moved the present writ petition with the aforesaid prayer.

5. Heard Mr.G.V.Vairam Santhosh, learned counsel appearing for the petitioner, who would submit that, first of all pursuant to the show cause notice though explanation has been given, the same has not been considered in proper perspective as it is reflected in the impugned order itself that in one line it has been referred as if the reply submitted by the petitioner to the show cause notice has been considered and it is not acceptable.

6. Secondly, the learned counsel for the petitioner would further invite the attention of this Court the provision of Section 14 of the Act especially Sub Section 4 which reads thus:

"[(4) Notwithstanding anything contained in sub-sections (1) to (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle:

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation ; and

(iii) a reasonable opportunity of being heard in the matter:

Provided further that the owner or the person from



whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle"

7. By relying upon this provision, the learned counsel would contend that before passing any order under Section 14(4) of the Act, show cause notice must be given to the person, who is the owner of the vehicle concerned as to on what grounds the proposed confiscation is going to be taken place and an opportunity of making a representation in writing within a reasonable time, not exceeding 14 days shall also be given and thirdly a reasonable opportunity of being heard shall also be given.

8. By citing these provisions, the learned counsel for the petitioner would contend that though a show cause notice alone was issued which has been promptly responded by the petitioner, the same has not been properly considered and moreover, no reasonable opportunity of being heard as contemplated under the third limb of first proviso of Sub Section 4 of Section 14 of the Act has not been given to the petitioner.

9. The learned counsel for the petitioner would also contend that as per the second proviso to Sub Section 4 option shall be given to the owner of the vehicle that in lieu of the confiscation paying of an amount not exceeding the market price of such vehicle shall also be given. Here in the case in hand, the petitioner has not been given any such option. Therefore, for these violations of the relevant provisions, especially Sub Section 4 of Section 14 of the Act, the impugned order is vitiated, therefore, he seeks indulgence of this Court.

10. Heard Mr.D.Ghandiraj, learned Government Advocate appearing for the respondent, who would submit that, as per the proviso to Sub Section 4, opportunity was given to the petitioner by way of show cause notice and either the petitioner has not given a proper reply or the reply whatever claimed to have been given having been considered, it was rejected as the same since have been reflected in the impugned order itself, it cannot be stated that the respondent has violated Sub Section 4 of Section 14 of the Act and therefore on that ground the impugned order cannot be assailed and therefore the learned Government Advocate would submit that the impugned order is sustained and order confiscating the vehicle concerned of the petitioner has become final. Therefore no indulgence need to be shown towards the petitioner against the impugned order, he contended.

11. I have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.



12.As has been rightly pointed out by the learned counsel appearing for the petitioner, certain mandatory procedure has been contemplated under Sub Section 4 of Section 14 of the Act as referred to above.

13.Insofar as such mandatory procedure is concerned, in the first stage, three steps have to be taken, one is that, what are all the grounds under which the respondent has proposed to confiscate the vehicle must be stated, secondly stating that, an opportunity of making a written representation shall be given to the owner of the vehicle and thirdly, a reasonable opportunity of being heard shall also be given to the petitioner.

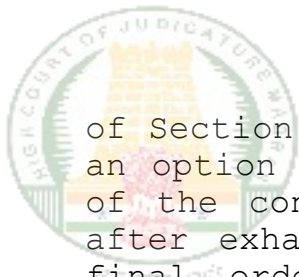
14.In this context, assuming that a show cause notice given by the respondent dated 16.09.2020 has been responded by the petitioner, as the petitioner has not filed any copy of such of his response in the typeset of papers, if the same has been considered by the respondent before passing the impugned order, it must have been stated as to what response was given by the petitioner, and whether the reasons given in the reply to the show cause has been considered in proper perspective, must be indicated and reflected in the order, however, except one line to state that the show cause given by the petitioner is not acceptable, no whisper is found in the impugned order, therefore, this Court can presume that the reply if at all given by the petitioner has not been considered in proper perspective.

15. Moreover, as per the third limb of the first proviso to Sub Section 4, a reasonable opportunity of being heard is also mandated, since the same admittedly had not been given to the petitioner, that can also be construed as a violation.

16.That apart, as per the second proviso to Sub Section 4 of Section 14, option shall be given to the owner of the vehicle to pay an amount not exceeding the market price of such vehicle, in lieu of the confiscation, however, such an option seems to have not been given to the petitioner and there is no whisper to find such an opportunity has been given at any point of time before the confiscation order is passed, therefore, in that aspect also, there has been a violation of Sub Section 4 on the part of the respondent. Therefore, in view of the aforesaid reasons, where some violations have been noticed on the part of the respondent especially in the context of Sub Section 4 of Section 14 of the Act, this Court feel that the impugned order cannot be sustained.

17.In the result, this writ petition is disposed of with the following order:

"that the impugned order is quashed. The matter is remitted back to the respondent for reconsideration. While reconsidering the same, due opportunity, as has been contemplated under Sub Section 4



of Section 14 of the Act, shall be given to the petitioner including an option to pay the market value of the vehicle concerned in lieu of the confiscation shall also be extended to the petitioner and after exhausting those procedure strictly in accordance with law, final orders shall be passed by the respondents. The needful aforesaid indicated shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order."

18. With this direction, this writ petition is disposed of. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-25788[F] dated 10/08/2021)

W.P. (MD) No.13577 of 2021
09.08.2021

SMV(CO)
KB(28.09.2021) 5P 3C