

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

WEDNESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 1677 OF 2023

Between:

Boda Suresh, S/o Yakaiah, Occ. Owner of the Vehicle R/o H.No. Nekkonda Thanda, Nekkonda Mandal, Mahabubabad District, Telangana State.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary Prohibition and Excise Department, Secretariat, Hyderabad
2. The Deputy Commissioner of Prohibition and Excise, Warangal Division
3. The Station House Officer, Nekkonda Police Station, Mahabubabad District
4. The Prohibition and Excise Station, Nekkonada, Warangal District

...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 a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 2nd respondent in not passing directing the 3rd respondent to release the Auto bearing No. TS 24 T 6189 seized in Cr. No.155/2020/PandE/B2 of, dt.8.11.2021 of P.S. Nekkonda, Warangal District in spite of the readiness of the petitioner to furnish the third party surety as the petitioner vehicle worth is Rs.1,50,000/- at present, as being illegal, and arbitrary and consequently direct the 3rd respondent to order for release of the vehicle to the petitioner;

IA NO: 1 OF 2023

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 3rd respondent to order for release of the petitioner's Auto bearing No. TS 24 T 6189 seized in Cr. No.155/2020/PandE/B2 of, dt.8.11.2021 of P.S. Nekkonda, Warangal District, pending disposal of the writ petition;

Counsel for the Petitioner: SRI. VEERA BABU GANDU

Counsel for the Respondent Nos 1, 2 & 4: AGP FOR PROHIBITION EXCISE

Counsel for the Respondent No 3: GP FOR HOME

The Court made the following: ORDER

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.1677 OF 2023

ORDER: (ORAL)

This writ petition is filed to declare the action of respondent Nos.2 and 3 in not releasing the petitioner's auto bearing No. TS 24 T 6189 seized in connection with Crime No.155/2020/P&E/B2 of Nekkonda Police Station, Warangal.

2. Heard learned counsel for the petitioner, learned Assistant Government Pleader for Prohibition and Excise, and perused the material available on record.

3. On 08.11.2021 at about 12.15 P.M, on reliable information about illegal transportation of Illicitly Distilled (ID) liquor in the subject vehicle, the Head Constable of Police, Nekkonda Police Station, along with staff have conducted vehicle checking at Nekkonda and found 120 kgs of jaggery and 20 kgs of alum in the subject vehicle of the petitioner. The vehicle was seized under the cover of panchanama in the presence of mediators and the First Information Report was registered with Nekkonda Police Station under Section 7A read with 8 (e) of the Telangana Prohibition Act, 1995 (for short, 'the Prohibition Act') and Section 34(e) of the Telangana Excise Act, 1968 (for short, 'the Excise Act'). The contraband along with the vehicle was produced before respondent No.2-Deputy Commissioner of Prohibition & Excise,

Warangal, under Section 46 of the Excise Act, with a request to pass orders for confiscation of contraband and the vehicle. A show cause notice dated 16.04.2022 was issued to the petitioner calling upon him to explain as to why the vehicle shall not be confiscated. During pendency of the confiscation proceedings, the petitioner filed a petition before respondent No.2 for interim custody of the vehicle, for which the petitioner submitted his consent to furnish Fixed Deposit Receipt as per the value of the vehicle assessed by the Motor Vehicles Inspector. However, the said petition was rejected. It appears, the petitioner has not submitted his reply to the show cause notice within the stipulated time of 15 days. Respondent No.2 requisitioned for chemical analysis report from the Telangana State Forensic Science Laboratory, who opined that in item No.1, jaggery is found, and in item no.2, aluminium ammonium sulphate commonly known as alum is found. Thus, by exercising power under Section 45 of the Excise Act read with Section 12 and 13 (2) of the Prohibition Act, the seized commodity i.e., 120 kgs of black jaggery and 20 kgs of alum was ordered to be destroyed by retaining samples thereof under proper intimation to the trial Court. The vehicle of the petitioner was confiscated.

4. Learned Assistant Government Pleader for Prohibition and

Excise submitted that the writ petition is not maintainable as the petitioner did not choose to file appeal under Section 46C of the Excise Act.

5. It is not the case of the petitioner that respondent No.2 lacks inherent jurisdiction. Thus, having not availed statutory remedy of appeal, the petitioner is not entitled to file this writ petition.

6. In the circumstances, the writ petition is disposed of giving liberty to the petitioner to file appeal before the Commissioner, Prohibition and Excise, under Section 46C of the Excise Act, within a period of three (03) weeks from the date of receipt of a copy of this order. The petitioner is also given liberty to file application for interim custody of the vehicle pending the appeal. If such application for interim custody of the vehicle is filed, the appellate authority shall pass orders thereon within a period of one week thereof.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed. No order as to costs.

SD/-MOHD.SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary Prohibition and Excise Department, Secretariat, State of Telangana, Hyderabad.

2. The Deputy Commissioner of Prohibition and Excise, Warangal Division
3. The Station House Officer, Nekonda Police Station, Mahabubabad District
4. The Prohibition and Excise Station, Nekkonada, Warangal District
5. One CC to SRI. VEERA BABU GANDU Advocate [OPUC]
6. Two CCs to GP FOR PROHIBITION EXCISE, High Court for the State of Telangana, Hyderabad. [OUT]
7. Two CCs to GP FOR HOME, High Court for the State of Telangana, Hyderabad. [OUT]
8. Two CD Copies

HIGH COURT

BVR, J

DATED: 25/01/2023

ORDER

WP.No.1677 of 2023



**WP IS DISPOSED
OF WITHOUT COSTS**