
(1998) 10 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28030 of 1998

A. Rafghunandan

APPELLANT

Vs

Assistant Secretary, Gudi Malkapur, Hyderabad and another

RESPONDENT

Date of Decision : 08-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 207(2)

Citation : (1998) 6 ALD 340 : (2000) 1 ALT 244

Hon'ble Judges : A.S. Bhate, J

Bench : Single Bench

Advocate : Mr. B. Sivaramakrishnaiah, for the Appellant;

Judgement

1. Writ petition is disposed of after hearing the learned Counsel for both sides. The contention of the learned Government Pleader for Transport is that the petitioner has not exhausted the remedy available u/s 207(2) of the Motor Vehicles Act, 1988 (hereafter referred to as the "Act") before approaching this Court and therefore, as alternate remedy exists, the petitioner should not be given any relief. On the other hand, the learned Counsel for the petitioner says that Section 207(2) of the Act is not obligatory. It is only directory and therefore, he can come to this Court. This argument has not much merit. When a remedy is provided by the Statute whether it is Mandatory or Optional, the Petitioner should first exhaust that remedy if he wants the relief.

2. Second contention raised by the learned Counsel for the petitioner is that in the instant case Section 207(2) of the Act does not apply because the violation alleged is only of breach of conditions of permit. There is no violation alleged in respect of not holding of valid documents. It is contended that Section 207(2) of the Act requires that the Person-in-charge of the Motor Vehicle has to apply to the Authorised Officer along with relevant documents for release of the vehicle. The argument is that question of production of relevant documents does not arise in case where the seizure is only on the ground of violation of conditions of the

permit and hence Section 207(2) of the Act has no application as there are no relevant documents to be produced in case where enquiry is required to be made to find out whether conditions of permit have been breached or not. I do not think that this contention can be accepted. It is true that Section 207(2) of the Act states that the applicant has to apply along with relevant documents for release of vehicle. Obviously the production of relevant documents can arise only when relevant documents are material for seeking release. If relevant documents are not material for seeking release then only application is required to be made and relevant documents need not be produced. The fact remains that Forum is still available for making an application for release of the vehicle to the concerned authority.

3. The learned Counsel for the petitioner then contended that this issue has been decided by this Court in WP No.22492 of 1995 and WP No.18533 of 1997 decided on 12-10-1995 and 7-8-1997 respectively. The learned Counsel has produced copies of these two judgments. On reading of these two judgments, I think that the orders passed in those judgments were not by way of expounding the legal position as such. On the other hand, it appears that the learned Judges have stated that they did not want to go into the aspect of the case or to decide the point on merits. Thus it was in facts and circumstances of those cases that the learned Judges thought it just and proper to direct release of the vehicle. No principle as such, was in my opinion laid down.

4. Having regard to these facts and circumstances, I think that the petitioner has alternate remedy available by making an application to the authorities envisaged u/s 207(2) of the Act and in my view unless the said alternate remedy is exhausted, it will not be proper to entertain the writ petition. In the circumstances, the petitioner is at liberty to make an application and the respondents shall decide the said application in accordance with law, expeditiously.

5. With the above observations, the writ petition is disposed of.