

(2020) 07 GUJ CK 0094
In the Gujarat High Court

Case No : R/Special Civil Application No. 8505 Of 2020

Bhavani Construction Co Through His Partner Vipul Vadibhai
Barot

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Motor Vehicles (Driving) Regulations, 2017 — Rule 7, 12, 12(2)(b)(ii), 22
Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 07 GUJ CK 0094

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Shaival M Patel, Jhala

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Learned Assistant Government Pleader Ms.Divyangna Jhala waives service of notice of Rule for the respondent-State.
2. Heard learned advocates appearing for the respective parties through Video Conferencing.
3. With the consent of the learned advocates appearing for the respective parties, matter is taken up for final hearing today.
4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed to issue appropriate writ, order or direction for releasing the vehicle being Truck bearing No.GJ-18-AZ-2426 of the ownership of the petitioner which is seized by the respondents. Reliance is placed on a decision dated 6.7.2020 in Special Civil Application No.7729 of 2020 where the Court relying on a decision dated 18.4.2018 in Letters Patent

Appeal No.397 of 2018, passed the following order:

1. Rule returnable forthwith. Learned Assistant Government Pleader Mr.Nikunj Kanara waives service of notice of rule for the respondents-

State.

2. With the consent of the learned advocates appearing for the respective parties, matter is taken up for final hearing today. By this petition under

Articles 226 and 227 of the Constitution of India, the petitioner has prayed to issue appropriate writ, order or direction for releasing the vehicle being

Truck bearing No. DN- 09-S-9971 of the ownership of the petitioner which is seized by the respondents.

3. Learned advocate for the petitioner, Ms. Namrata Shah has relied on an order dated 15.06.2020, passed by this court in Special Civil Application

No.7268 of 2020 wherein this court after relying on an order dated 18.04.2018 passed by the Division Bench of this court in Letters Patent Appeal

No.397 of 2018 in similar set of circumstances has released the vehicle detained therein. The relevant paragraphs read as under:

11. Having heard the learned advocates for the respective parties and having gone through the materials on record as well as the decision of the

Division Bench of this Court in the case of Zaverbhai Devani (supra), the facts of the present case is squarely covered by the said judgment, wherein,

the Division Bench has held as under:

8. Having heard the learned advocates appearing for the parties and having gone through the material produced on record, it is revealed that the

truck in question was carrying ordinary sand for which valid royalty passes are issued by the competent authority. The said truck was weighed at the

Government approved weigh bridge. Copy of the weighment slip is produced at page 14 of the compilation. The said vehicle was seized by the

respondent authority on 27.02.2018 at 6:30 a.m. under the Rules of 2017 and seizure memo was issued in Form-J of the Rules. The reason stated in

Form-J is that the truck was overloaded. For giving the said reason, the respondent authority has placed reliance upon the weighment slip of the truck

in question which was weighed at private weigh bridge. Thus, it is not in dispute that the truck in question was weighed at private weigh bridge which

is not approved by the Government. On 09.03.2018, the respondent authority issued a show cause notice to the petitioner under the provisions of the

Rules of 2017 alleging violation of Rule 7 of the Rules of 2017 and asked the petitioner to make the payment of Rs.1,05,000/- for compounding of the offences. It is further stated that if the petitioner will not remain present, appropriate decision would be taken ex parte. However, at this stage, it is required to be noted that the respondent authority has not followed the procedure prescribed under Rule 12 of the Rules of 2017.

9. Rule 12 of the Rules of 2017 provides as under:

12. Seizure of property liable to confiscation.-

(1) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that

purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or other thing (hereinafter referred to as

property) shall be liable to be seized by the Government in the manner specified in sub rule (2) of this rule.

(2) Every Authorized Officer seizing any property under these rules shall photograph the property and place on such property a mark in such manner

as may be prescribed, indicating that the same has been so seized and shall:

(a) issue a notice in Form J informing the person from whom the property is seized of the property so seized;

(b) conduct:

(i) an investigation and if he is satisfied that a compoundable offence has been committed in respect of the property, he may, subject to receipt of a

compounding application, order payment of such amount for compounding the offence as may be deemed appropriate; or

(ii) a preliminary investigation and shall produce the property seized before a court empowered to determine commission of such offence, if

compounding is not permissible under rule 22 or if no application for compounding is received pursuant to clause (a) above, upon the expiry of fifteen days from the date of seizure or upon completion of the investigation, whichever is earlier.

(3) Where any property seized under sub rule (1) is produced before a court under sub clause (ii) of clause (b) of sub-rule (2) and the court is satisfied

that offence has been committed in respect thereof, the court may order confiscation of the property under sub-section (4A) of Section 21 of the Act.

(4) No order for confiscating any property shall be made under sub-rule (3) unless the person from whom the property is seized is given:

(a) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(b) a reasonable opportunity of being heard in the matter.

(5) Upon expiry of fifteen days from the date of seizure of the property under sub rule (2) and prior to:

(a) payment for compounding the offence under sub-clause (i) of clause (b) of sub- rule (2); or

(b) completion of the investigation by the Authorized Officer under sub-clause (I) of clause (b) of sub-rule (2); or

(c) a determination under sub-rule (3), the Authorized Officer may release the property on the furnishing of a non interest bearing security deposit or a bank guarantee.

(6) The bank guarantee issued under sub rule (5) shall be valid for an initial period of one year and shall be renewed from time to time until payment

for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2) or a determination under sub- rule(3), as applicable, is made. The non-

interest bearing security deposit or bank guarantee shall be for an amount equivalent to ten times of the market value of the mineral seized or for such

other amount as may be specified by the Government through a notification, subject to a minimum of rupees two lakh: Provided that, if upon a

determination under sub-rule (3), a penalty for an amount exceeding the amount of non- interest bearing security deposit or bank guarantee is levied

and the penalty amount is not paid, then the penalty amount may be recovered in the same manner as if it were an arrear of land revenue.

(7) The property seized under this rule shall be kept in the custody of the Authorized Officer, any other third party, nearest police station or

Government premises until: (a) payment for compounding the offence is made; or (b) a bank guarantee is provided pursuant to sub-rule (5); or (c) an

order of the court directing its disposal is received by the Authorized Officer.â??

10. From the aforesaid provisions coupled with the facts of the present case, it is clear that after the seizure of the truck, notice was issued. However,

thereafter, the respondent authority has not followed the provisions contained in

Rule 12(2) (b) (ii) of the Rules of 2017. As per the said provision, if the application for compounding of offence is not received, the vehicle so seized shall be produced before the Court empowers to determine

commission of such offence, upon expiry of 15 days from the date of seizure or upon completion of investigation, whichever is earlier.

11. In the present case, after completion of 15 days from the date of seizure, when application for compounding of offence is not submitted by the

petitioner, it was the duty of the respondent authority to produce the said vehicle before the concerned Court. In absence of production of such vehicle

before the competent Court, the petitioner has lost his right to file an application under Section 451 of the Code of Criminal Procedure, 1973, for

release of the vehicle.â??

12. Thus, in view of the aforesaid discussion, we are of the view that the respondent authorities have failed to justify the reason for seizure of the

truck in question. When the respondent authorities have failed to follow the procedure prescribed under the Rules of 2017, we are of the view that this

is fit case where the action of seizure of the truck in question taken by the respondent authorities is required to be quashed and set aside and direction

is required to be given to the respondent authorities to release the truck in question forthwith.

13. Accordingly, the appeal is allowed and the order dated 13.03.2018 passed by the learned Single Judge in Special Civil Application No.3862 of 2018

is set aside. The action of the respondent authorities in seizing the truck in question under the Rules of 2017 is quashed and set aside. The respondent

authorities are hereby directed to release the truck in question forthwith. Civil application also stands disposed of.â??

12. As a result of hearing and perusal of the records, and taking into account the above settled legal position, the petition deserves to be allowed with

the following directions:

12.1. The action of the respondent authorities of seizing the truck bearing registration No. DN-09-S-9971 under Rule-12 of the Rules, 2017 is quashed

and set aside.

12.2. The respondent authorities are directed to release the truck in question, forthwith, on furnishing the bank guarantee by the petitioner amounting to

Rs.25,000/- of any nationalized bank for a period of one year before the release

of tractor.

12.3. The petitioner is further directed to file a reply to the show cause notice dated 04.02.2020 within a period of two weeks from today.

12.4. The respondent authority is directed to decide the show cause notice within a period of four weeks from the date of the receipt of the reply

received from the petitioner.

13. The registry is directed to send the copy of the writ of this order to the learned advocate appearing for the petitioner through e-mail, so as to

enable him to serve the same upon the respondent authorities. Rule is made absolute to the aforesaid extent. Direct service is permitted.â??

5. Considering the fact that the petitioner has already filed reply to the show cause notice on 1.5.2020, the action of the respondent authorities of

seizing the Truck bearing No.GJ-18-AZ-2426 is quashed and set aside. The respondent authorities are directed to release the truck in question,

forthwith, on furnishing a Bank Guarantee by the petitioner amounting to Rs.25,000/- (Rupees twenty five thousand only) of any Nationalized Bank for

a period of one year before the release of the Truck.

6. The respondent authority is directed to decide the show cause notice within a period of Four Weeks from the date of the receipt of the order of this

Court.

7. The Registry is directed to send the copy of the writ of this order to the learned advocate appearing for the petitioner through e-mail, so as to enable

him to serve the same upon the respondent authorities. Rule is made absolute to the aforesaid extent. Direct Service is permitted.