

(2009) 06 KL CK 0074

In the High Court Of Kerala

Case No : W.P (C) No's. 16426 and 16428 of 2009 (W)

Bijeesh Devassy

APPELLANT

Vs

The District Collector and The Sub Inspector of Police

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 23

Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 —
Rule 27, 28

Citation : (2009) 06 KL CK 0074

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : P.M. Ziraj, for the Appellant; No Appearance, for the Respondent

Judgement

V. Giri, J.—The vehicle bearing Reg. Nos. KL-02-F-2367 and KL- 17-C-5740 belonging to petitioners in these cases were allegedly seized for infraction of the provisions of the Kerala Protection of River Banks (Protection and Regulation of removal of sand) Act, 2002. They have approached the District Collector, the 1st respondent for release of the vehicle and are aggrieved by the non- consideration of their request as such.

2. The nature of the power exercised by the District Collector and the parameters within which such power is to be exercised have been dealt with by a Bench of this Court in Sanjayan v. Tahasildar 2007 (4) KLT 597. Principles have been reiterated in Subramanian Vs. The State of Kerala, The District Collector, The Tahsildar and The Sub Inspector of Police, .

3. In Subramanian's case, this Court observed that the power exercised by the District Collector is u/s 23 of the Kerala Protection of River Banks (Protection and Regulation of removal of sand) Act, 2002. It is also, therefore, quasi judicial in character. Reasons will have to be given by the District Collector while passing orders u/s 23 of the Kerala Protection of River Banks (Protection and Regulation

of removal of sand) Act, 2002 r/w Rules 27 and 28 of Kerala Protection of River Banks and Regulation of Removal of Sand Rules 2002. If there is a contention that the transportation of sand was supported by a pass issued by the competent local authority, that has to be referred. The materials which are placed before the District Collector by the subordinate officials shall also be looked into. This has been indicated in Subramanian's case. If motion is made by the owners of the vehicle for release of the vehicle on interim custody, it will be subject to the conditions mentioned in paragraph 58 of the said judgment. The District Collector may pass orders on such applications on interim custody. (The scope of the directions contained in Subramanian's case have later been dealt with in Sareesh v. District Collector 2009(2) KLT 906. Appropriate clarifications have been issued in the latter case.) Further conditions can be imposed in the course of release of the vehicle as indicated by this Court in Shoukathali v. Tahasildar 2009 (1) KLT 640.

4. Keeping in mind the observations made in the judgments in Shoukathali's case and Subramanian's case and other judgment which have been referred to, the 1st respondent in these cases shall pass final orders in the matter of confiscation/release of the vehicle in question after conducting an appropriate enquiry as early as possible, at any rate within three months from the date of receipt of a copy of this judgment.

5. In the meanwhile, if motion is made by the petitioners for interim custody of the vehicles bearing Reg. Nos. KL-02-F-2367 and KL-17-C-5740 , then orders shall be passed by the District Collector on the applications for interim custody of the vehicles, within three weeks from the date of receipt of a copy of this judgment in the light of the observations contained in Shoukathali v. Tahasildar 2009 (1) KLT 640, Subramanian Vs. The State of Kerala, The District Collector, The Tahsildar and The Sub Inspector of Police, and Sareesh v. District Collector 2009 (2) KLT 906.

The writ petitions are disposed of as above. The petitioners shall produce copies of the judgment in Subramanian, Shoukathali and Sareesh along with the certified copy of this judgment before the 1st respondent, for compliance.