

(2014) 10 KL CK 0063

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 20302 of 2010 (K)

Mohanan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0063

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Abdul Jaleel A., Advocate for the Appellant; Naushad Thottathil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is the registered owner of a tipper lorry bearing registration No. KL-04/6850. He challenges Ext. P1 order passed by the 2nd respondent, seizing the vehicle in connection with an allegation that the vehicle was transporting river sand in contravention of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, hereinafter referred to as the "Sand Act". It is the case of the petitioner that the vehicle was transporting ordinary sand, under cover of a valid pass in Form P issued under the Kerala Minor Minor Concession Rules, and therefore, there was no justification on the part of the respondents in apprehending the vehicle and confiscating the same without any valid reason. He would in particular point to Ext. P2 report of the Geologist, which is relied upon by the District Collector while passing Ext. P1 order of confiscation, which states that the Geologist, on a prima facie examination of the minor mineral was convinced that it was similar to river sand and that only a general opinion could be given in view of the fact that he did not have the necessary equipments for a detailed analysis of the sample sent to him. It is the case of the petitioner that such a report of the Geologist could not have formed the basis for an order of confiscation in the hands of the District Collector.

2. I have heard Sri. A.A. Jaleel, the learned counsel appearing on behalf of the

petitioner as also Sri. Naushad Thottathil, the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that this is a case where the vehicle belonging to the petitioner has been confiscated on the allegation that it was involved in the commission of an offence under the Sand Act. The basis of Ext. P1 order passed by the District Collector, is the report of the Geologist, to whom a sample of the sand that was transported in the vehicle was forwarded for his report as to whether it was ordinary sand or river sand. Ext. P2 report of the Geologist, which the petitioner obtained pursuant to an application under the Right to Information Act, reveals that the Geologist could not verify the sample for want of the necessary equipments/apparatus and therefore only a prima facie opinion was offered to the effect that the sample that was seized resembled river sand. I am of the view that such a report by the Geologist cannot form the basis of a finding, by the District Collector, of the commission of an offence by the petitioner. The provisions of the Sand Act are attracted only if the sand that is found transported is river sand and not ordinary sand, for the transportation of which the petitioner had a valid pass. Under such circumstances, it was incumbent upon the respondents, who alleged that what was being transported was not ordinary sand but river sand, to establish with cogent materials that the substance that was transported was in fact river sand. No doubt, the District Collector could have taken the assistance of the Geologist for this purpose. In the instant case, however, the Geologist's report does not really establish that the substance that was transported was actually river sand. In that view of the matter, the reliance on the said report could not have formed the basis of a finding in Ext. P1 confiscation order that what was transported was actually river sand and not ordinary sand. The reliance in Ext. P1 being on a report that was not worthy of credence, Ext. P1 cannot be legally sustained. Accordingly, I quash Ext. P1 order of the District Collector and allow this writ petition. The amounts, if any, paid by the petitioner as a condition for release of the vehicle, during the pendency of the writ petition, shall be refunded to him within a period of one month from the date of receipt of a copy of this judgment. The bank guarantee, if any, furnished by him shall also stand discharged.