

(2011) 08 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 9928 of 2011

Rajuji Vanzara

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005
— Rule 13, 14, 17, 18, 20

Citation : (2011) 08 GUJ CK 0026

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : C.B. Dastoor, for the Appellant; Rashesh Rindani, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Rashesh Rindani, learned Assistant Government Pleader waives service of notice of Rule on behalf of the Respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

2. By filing the present petition under Article-226 of the Constitution of India, the Petitioner has prayed, inter-alia, for issuance of directions to Respondent No. 3 to decide the representation made by him on 07.07.2011, for release of his vehicle, under the provisions of Rule-18 of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005 ("the Rules", for short).

3. The Petitioner is the owner of the vehicle, namely, Hydraulic Excavator machine, which has been leased to one Thanaji Daglai Vanzara, who is carrying on activities of digging sand, as per the licence issued to him. Respondent No. 3 issued a notice to the Petitioner dated 20.06.2011, regarding the seizure of the vehicle. Thereafter, the said Respondent issued a second notice dated

07.07.2011, calling upon the Petitioner to remain present and give an explanation on 14.07.2011. The Petitioner replied to the notice vide reply dated 07.07.2011. It is the case of the Petitioner that under Rule-18 of the Rules, the Respondent No. 3 (Geologist) has power to release the vehicle that has been seized, on furnishing a bond.

According to the Petitioner, he has personally appeared before Respondent No. 3 on 07.07.2011, however, the vehicle of the Petitioner has still not been released. It is, therefore, prayed that Respondent No. 3 may consider the representation of the Petitioner and take a decision regarding release of the vehicle on issuance of a bond, at the earliest.

4. I have heard Mr. C.B. Dastoor, learned Counsel for the Petitioner and Mr. Rashesh Rindani, learned Assistant Government Pleader, who has appeared on an advance copy of the petition and perused the averments made in the petition.

5. Rule-18 of the Rules reads as under:

18. Power to release property seized on bonds.-The authorised officer or who has seized any vehicles or other conveyance under Rule 13 and where a report of such seizure has been made to the officers authorised by Commissioner under Sub-rule (3) of that rule may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required before the officers authorized by the Commissioner having jurisdiction to try the offence on account of such seizure has been made.

6. There is no dispute regarding the fact that Respondent No. 3 has been authorized by the Government vide Notification dated 29.08.2006 to exercise power under Chapter-VI, Rules-13, 14 and Rules 17 to 20 of the Rules; therefore, the said Respondent has power to take a decision upon the representation made by the Petitioner regarding release of his vehicle. The Petitioner is ready and willing to execute a bond, as required by the Rules. According to the learned Counsel for the Petitioner, the Petitioner has also appeared before Respondent No. 3 personally, on 07.07.2011.

7. In view of the above-quoted rule and the facts and circumstances of the case as mentioned above, the interest of justice would be served, if the following order is passed:

Respondent No. 3 is directed to consider the representation made by the Petitioner regarding release of his vehicle and take a decision, in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

The Petitioner shall co-operate in the proceedings and shall execute a bond as required by the provisions of Rule-18 of the Rules.

The petition is partly-allowed. Rule is made absolute, in the above terms. There shall be no orders as to costs.

Direct service of this order is permitted.