
(2009) 09 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 22323 of 2009

Subramanian

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 29-09-2009

Acts Referred:

Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 12(2)

Citation : (2009) 4 ILR (Ker) 466 : (2009) 4 KLT 742

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : V.R. Kesava Kaimal and N.M. Madhu, for the Appellant; M.A. Asif, Government Pleader, for the Respondent

Judgement

P.N. Ravindran, J.—The petitioner is the registered owner of a goods vehicle bearing registration No. KEH 3619. It was seized by the Deputy Tahsildar on 27.4.2009 on the allegation that it was used to transport river sand without a valid pass. After such seizure, the vehicle was produced before the District Collector, Malappuram. The petitioner moved the District Collector, Malappuram, by submitting Ext.P3 representation wherein he pointed out that as the tyre of the vehicle got punctured and as it was a fully loaded vehicle, it took time to change the tyre and resume the trip. It was at that time the squad seized the vehicle and produced it before the District Collector, Malappuram, it was stated. The petitioner contended that the vehicle was not used to transport river sand without a valid pass. The District Collector considered the petitioner's contentions and passed Ext.P4 order dated 1.6.2009 ordering confiscation of the said vehicle. He also ordered that in lieu of confiscation, it will be open to the petitioner to pay the sum of Rs. 50,000/-, fixed as value of the vehicle to the river management fund. Ext.P4 is under challenge in this Writ Petition.

2. The petitioner challenges Ext.P4 on various grounds. He contends that no time limit has been fixed for transporting the sand and that on the pass issued to his

vehicle, it is clearly stated that the petitioner's vehicle left the Kadavu at 2.55 p.m. It is contended that the District Collector, Malappuram, has ordered confiscation on mere surmises and conjectures. From the pass it is evident that the vehicle left the Kadavu at 2.55 p.m. on 27.4.2009. The District Collector, Malappuram, has in Ext.P4 ordered confiscation of the petitioner's vehicle on a short ground that as the vehicle was found at a place only 300 metres away from the Kadavu, more than one hour and twenty minutes after the pass was issued, it is evident that the original of Ext.P2 pass was misused to transport another lorry load of river sand.

3. Section 12(2) of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, states that no sand removal operation shall be carried out in a Kadavu before 6 a.m. and after 3 p.m. The original of Ext.P2 pass issued to the petitioner states that the vehicle left the Kadavu at 2.55 p.m. As per law, no sand removal operation could have been carried out from the Kadavu in question after 3 p.m., that is another five minutes thereafter. The District Collector has not established by any cogent material especially the registers maintained at the Kadavu that after 3 p.m., sand removal operation was carried out in the Kadavu. Therefore the finding of the District Collector that after the sand covered by Ext.P2 pass was transported, another lorry load of sand was transported using the very same pass, cannot be sustained. The District Collector has not entered a finding that after 3 p.m. another lorry load of sand was removed from the Kadavu. He has in fact rested his findings on mere surmises and conjectures. To order confiscation, the District Collector should have had cogent materials which would establish that Ext.P2 pass was misused to transport another lorry load of sand. Apart from the ipse dixit of the District Collector, there is no cogent material on which it can be found that Ext.P2 pass was thus misused. The petitioner had given a possible reason for the presence of the lorry at the spot where it was seized and in the absence of any cogent material to conclusively establish that sand removal operation was carried out from the Kadavu in question after 3 p.m., the conclusions arrived at by the District Collector cannot be sustained.

For the reasons stated above, I hold that Ext.P4 cannot be sustained. It is accordingly quashed. The vehicle described in Ext.P4 shall be released to the petitioner forthwith on the petitioner producing a certified copy of this judgment before the District Collector, Malappuram.