
(1999) 02 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3793 of 1999

Yelankuru Ramana

APPELLANT

Vs

Deputy Commissioner of Prohibition and Excise, Kurnool

RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 46
Constitution of India, 1950 — Article 226

Citation : (1999) 2 ALD 446 : (1999) 2 ALT 379

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. A. Vijay Bhaskar Reddy, for the Appellant; Government Pleader for Excise, for the Respondent

Judgement

1. Rule nisi. Learned Government Pleader for Excise took notice for respondents.
2. The petitioner's motor vehicle viz., Commander Zeep bearing Registration No.AP-04-9786 was seized by the Excise authorities on the alleged ground that the said vehicle was involved in commission of certain offence under the A.P. Excise Act. The main confiscation proceedings are pending before the respondent. The petitioner made an application to the respondent - the Deputy Commissioner of Prohibition and Excise, Kurnool, for release of the motor vehicle to the interim custody of the petitioner. In response to that application, it seems that the Deputy Commissioner caused assessment of the value of the Zeep through the Motor Vehicle Inspector, Proddatur, and thereafterwards issued the notice dated 7-9-1998 directing the petitioner to produce the bank guarantee worth of Rs. 1,20,000/-drawn in favour of the Deputy Commissioner of Prohibition and Excise, Kurnool and informing the petitioner that after the petitioner furnishes bank guarantee, he would take further steps to release the motor vehicle. The petitioner without complying with the directions of the Deputy Commissioner and after a lapse of considerable time, has approached this Court by way of this Writ Petition assailing the direction of the Deputy Commissioner.

3. The learned Counsel for the petitioner, placing reliance on the judgment of a learned single Judge of this Court in *S. Jaganmohanreddy Vs. Prohibition and Excise Inspector, Tandur Station and Another*, would contend that the petitioner is not liable to furnish bank guarantee for a sum of Rs. 1,20,000/- inasmuch as the subject vehicle is comparable to a car in respect of which according to the guidelines issued by this Court in the above judgment, the petitioner can be asked to furnish Bank Guarantee for a maximum sum of Rs. 10,000/- only, for the release of the motor vehicle. In para (9) of the above judgment, the learned Judge issued the following directions:

"... In the circumstances, I am of the opinion that the following guidelines can be usefully adopted by the department:

(i) in every case of seizure, full particulars of the owner should be obtained from the driver of the vehicle and notice should be invariably given to the owner immediately;

(ii) in the case of commercial vehicles, such as buses, taxis and autos, there should be interim release of the vehicle immediately and in any case within 24 hours;

(iii) in the case of such commercial vehicles, an undertaking to produce the vehicle and not to alienate the same should be sufficient unless there is actually evidence to show that the driver had actively connived in the offence;

(iv) in the case of private vehicles also, the name and other particulars of the owner should be obtained from the driver and a specific notice should be given to such owner/s immediately.

(v) the security for production of the vehicle not exceeding 10% of the value of the vehicle should be sufficient;

(vi) perhaps, it is possible to notify that in the case of cars, an amount of Rs.10,000/-, in the case of scooters Rs.2,000/-; and in the case of mopeds Rs. 1,000/- should be deposited either by cash or bank guarantee and on such deposit the vehicle would be immediately released. This should actually relieve the congestion in the yards where such vehicles are dumped;

(vii) in every case of application for release of the vehicle, there must be a speaking order whenever it is decided not to release the vehicle so that the owner can take up the matter further".

4. Andhra Pradesh Excise Act does not specify the deposits to be made by the owners of the motor vehicle who seek interim custody of the motor vehicles pending confiscation proceedings before the Deputy Commissioner or pending appeal before the Commissioner. It is trite to state that the power vested in the officers of the Excise Department to release motor vehicles to the interim custody of the owners pending enquiry before the Deputy Commissioner or pending appeal before the Commissioner is a discretionary power. It is well

settled that statutory discretionary power should be brought to bear on facts and circumstances of each case and that power cannot be fettered by self-imposed restrictions. Discretion always means freedom to choose. If there is no freedom vested in the officers of the Excise Department to determine and demand appropriate security for release of the motor vehicles to the interim custody of the owners, the power vested in the officers of the Excise Department to order interim custody of the vehicles on furnishing appropriate security cannot be called a discretionary power. The guidelines issued by this Court, in the above judgment, with utmost respect, I should say, tantamount to limiting the discretionary power vested in the Excise Officers. The freedom to direct the owners of the motor vehicles to furnish appropriate bank guarantee or deposit receipt having due regard to the facts and circumstances of each case is fettered by standardising the deposits to be made by the owners of the vehicles, in terms of the above judgment. Alternatively, I am of the considered opinion that the directions issued in the above case tantamounts to the Court legislating and such a course is constitutionally impermissible. As pointed out supra, the Statute is silent regarding the deposits to be made by the owners of the motor vehicles who seek interim custody of the vehicles either before the original authority or before the appellate authority, and freedom to choose and insist for appropriate deposit is granted to the donees of the power viz., the Deputy Commissioner and the Commissioner of Prohibition and Excise. If that is so, the important question that arises for consideration is whether the Court can step in and standardise and deposits to be made by the owners of the vehicles in the event of their seeking interim custody of the vehicles, in exercise of the power of judicial review under Article 226 of the Constitution of India. My considered opinion is that the Court cannot do that, and if it does, it will be usurping the power of the Legislature. It is trite to state that specification and/or standardisation of the deposits to be made by the owners is an essential legislative function.

5. In that view of the matter and for the reasons stated above, it is my misfortune to differ, with respect, with the standardisation made by the learned Judge relating to the quantum of deposits to be made by the owners of the motor vehicles when they seek interim custody of the motor vehicles.

6. Accordingly and to have an authoritative pronouncement on the question, I think it apt and proper to refer this case to the Division Bench. Hence, I refer this writ petition under Rule 14 of the Writ Proceeding rules to the Division Bench. The Registry is directed to place the papers before the Honourable the Chief Justice for necessary orders, and post this writ petition before the appropriate Division Bench as His Lordship directs.