

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21137 OF 2014

ORDER:

The relief sought for in this writ petition is to declare the action of the respondents, in seizing the petitioners' vehicles without following any procedure, as illegal and arbitrary.

Learned Government Pleader for Mines & Industries would draw attention of this Court to the new Rules which have been made and notified in G.O.Ms.No.186 dated 17.12.2013 modifying the earlier Rules regulating quarrying and transportation of sand.

Rule 9-Q (1) prescribes a penalty for the first and second offences. Under rule 9-Q (1) (ii) if the vehicle is found to be involved in an offence more than two times, it shall, along with sand, be liable for confiscation. Rule 9-Q (2) provides for seizure of the vehicle. 9-Q (3) stipulates that the authorized officer, who has seized the vehicle, shall order confiscation of the vehicle so seized. Rule 9-Q (4) stipulates that no order of confiscation of any vehicle shall be made, under sub-rule (3), unless the person from whom the vehicle is seized is given: (i) a notice in writing informing him of the grounds on which it is proposed to confiscate such property; (ii) an opportunity of making a representation in writing within such time as may be specified in the notice against the grounds for confiscation; and (iii) a reasonable opportunity of being heard in the matter. Rule 9-Q (5) prohibits confiscation, under sub-rule (3), being made of any vehicle if the owner of the vehicle proves, to the satisfaction of the authorized officer, that it was used in carrying on operations without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the vehicle in committing the offence; and each of them had taken all reasonable and necessary precautions against such use. Under the proviso to Rule 9-Q (5), no order prejudicial to any person shall be passed without being afforded an opportunity of being heard. Rule 9-Q (6) stipulates that any officer who has seized any vehicle under Sub-rule (1)

(ii), and where he makes a report of such seizure to the Competent Court under sub-rule (2), may release the same on the execution of a bond by the owner thereof for the production of the vehicle so released as and when directed by the competent Court. Under Rule 9-Q (8), upon receipt of any report under sub-rule (2), the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the vehicle according to law.

The amended Rules, notified in G.O.Ms.No.186 dated 17.12.2013, prescribe a penalty for the first and second offences and, thereafter, for the confiscation of the vehicle after following the procedure stipulated therein. Even in cases where a vehicle is sought to be confiscated, the officer who seizes the vehicle is empowered to direct its release under Rule 9-Q (6) on execution of a bond by the owner thereof for production of the vehicle so released as and when directed by the Competent Court. Proceedings for confiscation can be instituted in cases where the offences which have been committed are for the third or more times.

In view of the amended Rule 9-Q (1) (i) and (ii), read with Rule 9-Q (6), the petitioners are permitted to submit applications to the officer, who seized the vehicles; the said officer shall, within three days from the date of receipt of the applications; examine whether the vehicles were used in committing the offence for the first and the second time; and, if so, consider directing release of the vehicles on payment of the prescribed penalty. If, on the other hand, the vehicles are found to have been used in the commission of the offence, for three or more times, the officer concerned shall consider directing release of the vehicles, in accordance with Rule 9-Q (6), on a bond being executed by the owners of the vehicles for their production as and when directed by the Court.

The entire exercise, culminating in an order being passed, shall be completed within three days from the date of submission of the representation by the petitioners; and necessary action shall be taken for release of the vehicles, in cases falling within the ambit of Rule 9-Q(1)(i), on payment of the prescribed penalty; and, in other cases, on a bond being

executed in terms of Rule 9-Q (6) of the Rules.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

31st July 2014

RRB