Unnikirhsnan T.V. Vs The District Collector, The Sub Inspector of Police and The State of Kerala

WP (C) . No. 23455 of 2009 (B)

Court: High Court Of Kerala

Date of Decision: Aug. 17, 2009

Acts Referred:
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 â€" Section 23#Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 â€" Rule 27, 28

Hon'ble Judges: V. Giri, J

Bench: Single Bench

Advocate: V. Sethunath, for the Appellant; No Appearance, for the Respondent

Judgement

V. Giri, J.
The vehicle belonging to the petitioner, bearing registration No. KL-3P/5625 was allegedly seized for infraction of the

provisions of the Kerala Protection of River Banks (Protection and Regulation of Removal of Sand) Act, 2002. He has approached the District

Collector, the 1st respondent for release of the vehicle vide Ext.P2 and is aggrieved by the non-consideration of his request as such.

2. The nature of the power exercised by the District Collector and the parameters within which such power is to be exercised have been dealt with

by a Bench of this Court in Sanjayan v. Tahasildar 2007 (4) KLT 597. Principles have been reiterated in Subramanian Vs. The State of Kerala,

The District Collector, The Tahsildar and The Sub Inspector of Police, .

3. In Subramanian"s case, this Court observed that the power exercised by the District Collector is u/s 23 of the Kerala Protection of River Banks

(Protection and Regulation of removal of sand) Act, 2002. It is also, therefore, quasi judicial in character. Reasons will have to be given by the

District Collector while passing orders u/s 23 of the Kerala Protection of River Banks (Protection and Regulation of removal of sand) Act, 2002

read with Rules 27 and 28 of Kerala Protection of River Banks and Regulation of Removal of Sand Rules 2002. If there is a contention that the

transportation of sand was supported by a pass issued by the competent local authority, that has to be referred. The materials which are placed

before the District Collector by the subordinate officials shall also be looked into. This has been indicated in Subramanian''s case. If motion is made

by the owners of the vehicle for release of the vehicle on interim custody, it will be subject to the conditions mentioned in paragraph 58 of the said

judgment. The District Collector may pass orders on such applications for interim custody. (The scope of the directions contained in

Subramanian''s case has later been dealt with in Sareesh v. District Collector 2009(2) KLT 906. Appropriate clarifications have been issued in the

said judgment). Further conditions can be imposed in the course of release of the vehicle as indicated by this Court in Shoukathali v. Tahasildar

2009 (1) KLT 640.

4. Keeping in mind the observations made in the judgments in Shoukathali''s case, Subramanian''s case and Sareesh''s case which have been

referred to, the 1st respondent in this case shall pass final orders in the matter of confiscation/release of the vehicle in question after conducting an

appropriate enquiry, as early as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

5. In the meanwhile, if a motion is made by the petitioner for interim custody of the vehicle, then orders shall be passed by the District Collector on

the application {Ext.P2} for interim custody of the vehicle, within three weeks from the date of receipt of a copy of this judgment in the light of the

observations contained in Shoukathali v. Tahasildar 2009 (1) KLT 640, Subramanian Vs. The State of Kerala, The District Collector, The

Tahsildar and The Sub Inspector of Police, and in Sareesh v. District Collector 2009(2) KLT 906.

6. I make it clear that I have not considered the petitioner''s contentions on merits. It is upto the District Collector to consider whether the vehicle is

to be released on interim custody or not. It is also upto the District Collector to consider, in accordance with law, the question as to whether the

vehicle belonging to the petitioner has been used in a manner as to contravene the provisions of the Act and the Rules framed thereunder and as to

whether the vehicle is liable for confiscation and pass final orders on that basis.

The writ petition is disposed of as above. The petitioner shall produce copies of the judgments in Subramanian, Shoukathali and Sareesh, along

with the certified copy of this judgment before the 1st respondent, for compliance.