

Kabeer K.P. Vs The Lower Division Clerk, The District Collector, The Sub Inspector of Police and State of Kerala

Court: High Court Of Kerala

Date of Decision: June 15, 2009

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

Hon'ble Judges: V. Giri, J

Bench: Single Bench

Advocate: Sunny Mathew, for the Appellant; No Appearance, for the Respondent

Judgement

V. Giri, J.

The vehicle bearing Reg. No. KL-09-L-3791 belonging to petitioner 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 2nd

respondent for release of the vehicle 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

r/w 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 owner 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 on interim custody. (The scope of the directions contained in

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

the latter case). 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 and Subramanian's case and other judgment which have been

referred to, the 2nd respondent 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 motion is made by the petitioner for interim custody of the vehicle bearing Reg.KL-09-L-3791, then orders shall be passed

by the District Collector on the application for interim custody of the vehicle, within four 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 Sareesh v. District Collector 2009(2) KLT 906.

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

the certified copy of this judgment before the 2nd respondent, for compliance.