



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 8154 of 2024
Reserved on : 24.4.2024
Date of Decision: 27.5.2024

Lakhveer Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Bhupinder Singh Kundra, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, a challenge is made to the impugned notice(s) Annexure P-1, issued by respondent No. 3. A reading of Annexure P-1 discloses that the petitioners vehicles respectively bearing No. RJ07-GC-0912 make TATA, bearing No. PB05-T-9716 make Tata, and, bearing No. PB10-DS-3091 make Tata (4018-C), became seized, on account of the therein carried minor mineral concerned, thus becoming transported without its drivers, at the border post manned by the personnel of the Government of Punjab, thus holding the documents, as required under Sub Rule (2) of Rule 74 of the Punjab Minor Mineral Rules, 2013 (hereinafter for short called as 'the Punjab Rules of 2013').

2. Annexure P-1 is the show cause notice(s) issued upon the present petitioner to produce those documents, as contemplated in Sub Rule (2) of Rule 74 of 'the Punjab Rules of 2013'.



3. Annexure P-1 also displays that in case the said documents are not produced by the present petitioner, thereupon, the competent authority becoming empowered to impose the relevant compounding fees vis-a-vis the petitioner's respective vehicles, thus in terms of Rule 75 (1) of 'the Punjab Rules of 2013', besides theretos Annexure P-1 makes a further speaking that the petitioner shall also become amenable for becoming prosecuted under Rule 76 of 'the Punjab Rules of 2013'.

Submissions of the learned counsel for the petitioner

4. The learned counsel for the petitioner submits that, the contents of the impugned show cause notice, as carried in Annexure P-1 are utterly false, as all the relevant documents/wieghment slips, were at the relevant time in the custody and possession of the respective drivers of the vehicles. He further submits, that the vehicles (supra) were carrying bajri from Gurmeet Stone Crusher to village Phide Kotakpura, and, the drivers of the said vehicles were carrying valid forms X, and, were also carrying a royalty receipt dated 31.3.2024. However, inadvertently the destination mentioned in the forms X was mentioned as Gilco Stone Crusher Allowal, instead of village Phide, Kotakpura. The learned counsel further submits, that the suppliers Gurmeet Stone Crusher, and, Punjab Rajasthan Transport Co., have admitted the above mistake by providing declarations (Annexure P-3 and P-4) to the petitioner. He further submits that the vehicles (supra) were having valid permits along with certification(s) of fitness along with valid insurance policy(ies), and, that the drivers of the vehicles (Supra) were also carrying valid driving licences. The learned counsel further submits, that no law has been violated while transporting the grit from Gurmeet Stone Crusher, vis-a-vis its destination, which was inadvertently mentioned while



generating X-forms by Gurmeet Stone Crusher. Therefore, the learned counsel submits, that the issuance of the impugned show cause notice(s) (Annexure P-1), and, also the impounding of the petitioner's vehicles by the officials of the Government of Punjab, rather is completely an illegal act.

Submissions of the learned State counsel.

5. On the other hand, the learned State counsel submits that, the impugned notices (Annexure P-1) have been issued upon the petitioner's impounded vehicles, in terms of Rules 74 and 75 of the 'Punjab Rules of 2013', wherein, a necessity becomes cast upon the respective drivers of the impounded vehicles, to at the relevant border post, thus produce documents rather to substantiate the valid sourcing of the minor minerals as becomes transported in the impounded vehicles.

6. The learned State counsel further submits, that the instant petition is not maintainable, as petitioner did not approach the Executive Engineer-cum-District Mining Officer, Rupnagar, as per the challan issued by respondent No. 3. Moreover, he submits, that since, upon, any adverse order became passed by the Executive Engineer-cum-District Mining Officer concerned, thereupon the petitioner was also having liberty to file an appeal thereagainst, thus before the statutory appellate authority concerned. Resultantly, he forcefully argues, that the present petition is premature, and, is, as such, required to be dismissed.

7. The learned State counsel has placed reliance on an order passed by this Court in ***CWP-6456-2020***, titled as ***M/s United Mining Corporation versus State of Haryana and others***, wherein, a direction was issued that any rawangi pass, as maintained by the driver, of the apposite vehicle is required to be online tallied with the apposite e-rawangi portal,



which is same as the confirmation receipt issued by the State of Punjab at the time of entry of the vehicle concerned, into the State of Punjab, thus at the Border Check Post. He further submits, that in the present case, the petitioner's trucks became apprehended at a place away from their prescribed route(s), as mentioned in the Confirmation receipt (CR Form), thus notices under Rule 74 and 75 of the Punjab Rules of 2013, became issued.

Analysis of the submissions addressed before this by the learned counsel for the petitioner and by the learned State counsel and the reasons for accepting the submissions of the learned State counsel.

8. Though, the instant petition is a miscarried remedy, as the remedy as available to the present petitioner, to challenge the impugned show cause notice (Annexure P-1), rather was through his constituting an appeal thereagainst under Rule 44(2) of the Punjab Rules of 2013, thus before the Secretary, Mines and Geology, Punjab.

9. However, since a substantial question of law, has arisen in the instant petition, relating to the legality of the issuance of show cause notice, especially when the impounding(s) of the trucks at the instance of the mining officers of the State of Punjab, rather were made, despite the fact, that X-Forms (Annexures P-5, P-6 and P-7), became issued by the Department of Industries, Geological Wing, Government of Himachal Pradesh, whereunders the impugned vehicles were permitted to make ingress into the territories of Punjab. Moreover, prima facie therebys the minor minerals, as became transported in the impounded trucks, thus prima facie are deemed to be validly sourced.

10. However, the destination of the consignee concerned, as mentioned in X-Forms, is Gilco Stone Crusher, but the drivers of the



impounded trucks did ex-facie deviate from the said destination of the consignee, and, rather proceeded to village Phide Kalan, Kotakpura. The above deviation from the destination(s), as mentioned in X-Forms, is thus argued to be a permissible deviation, and, becomes rested upon Annexures P-3 and P-4, as become appended to the instant writ petition.

11. In consequence, it has to be determined whether the said annexures can be assigned any credence, and, thereby whether this Court can quash the impugned show cause notice (Annexure P-1).

12. Furthermore, the learned counsel for the petitioner, has argued, that the deviation, as made through Annexures P-3 and P-4, from the destination, prescribed in the X-Forms, is a valid deviation, and, also has made a submission, that in case, the said deviation, is not countenanced by this Court, thereby there would be an ill-curtailment vis-a-vis the fundamental right of the petitioner, to freely engage in practicing his business, and, profession, but only subject to reasonable restrictions, in terms of Article 304 of the Constitution of India, being thus validly imposed on the inter-state or intra-state commerce, as may become embarked. The provisions of the said Article become extracted hereinafter.

“304. Restrictions on trade, commerce and intercourse among States

Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of



trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.”

13. The learned counsel for the petitioner further submits, that the State of Punjab through issuing the impugned show cause notice(s) (Annexure P-1), has rather imposed unreasonable restrictions, thus on the petitioner's fundamental rights to practice his business or profession or has impinged upon his freedom of inter-state commerce. In other words, he argues, that the issuance of show cause notice, is vitiated, as thereby not only the fundamental right of the petitioner to engage himself in his avowed, business or profession has been unreasonably restricted, but also the said show cause notice is completely arbitrary, and, unreasonable, as despite the Government of Himachal Pradesh issuing an X pass, whereby the petitioner's trucks became authorized to make valid ingresses into the State of Punjab, yet the petitioners' trucks becoming illegally impounded by the officers of the Punjab Government.

14. It is also in the above respect, that irrespective of an alternative remedy of an appeal in terms (supra), becoming available to become resorted by the petitioner, whereby the instant writ petition may be a misconceived remedy, that this Court deems it imperative to answer the above substantial question(s) of law, which arise for determination in the instant writ petition.

15. Though the X-Forms undisputedly authorized the drivers of the petitioners' trucks to make them validly enter into the territories of the State of Punjab. Nonetheless, the State of Punjab in impounding the petitioner's



trucks, and, consequently issuing show cause notice (Annexure P-1), thus has done so in terms of Rules 74 and 75, as occur in the Punjab Rules of 2013, the relevant provisions whereof are extracted hereinafter.

74. Check-post, barrier, weighment and inspection of minerals in transit. - (1) *If the Government considers it necessary to do so with a view to checking the transportation and storage of minerals raised without lawful authority, it may set up check-posts at any place in the State of Punjab.*

(2) *Any authorised officer may check any carrier at any place, whether it is a check post or not, and the person in-charge of the carrier shall furnish weighment slip in Form 'T' and other particulars such as bill or receipt or delivery note on demand by him.*

(3) *At every check-post set up under sub-rule(1), when so required by an authorised officer concerned, the person in-charge of the carrier shall stop for examination of the mineral in transit and inspection of all records and documents relating to the mineral in his possession. The person in charge of the carrier shall, if so required by an official, furnish his name and address and also that of the Mineral Concession Holder and the name and address of the consignor and the consignee. The authorised official after checking the mineral and carrier shall put his signatures on the weighment slip.*

(4) *The authorised official shall seize the mineral alongwith the carrier in transit, if it is not mentioned in a valid weighment slip or if the description or quantity is clearly at variance with the weighment slip.*

(5) *The authorised official shall give a receipt of such mineral and carrier seized by him to the person from whom the mineral and the carrier has been seized.*

(6) *In case the person in-charge of the carrier carrying the mineral not covered by weighment slip has been intercepted at any place other than a check post, then authorised officer/official shall direct the person in charge of the carrier to carry the mineral to the nearest police station or check-posts as the case may be:*

Provided that if the person in charge of the carrier refuses to carry the mineral and the carrier to the nearest police station or check-post, the authorised officer/official may seize the mineral and the carrier and take the same in his possession and transport it at the risk and cost of the carrier to the nearest police station or check post.

(7) *The person in-charge of any carrier entering the State limits or passing through the State and bound for any place outside the State shall furnish proof to the effect that the minor minerals have been raised in some other State. In case he fails to furnish proof to that effect, action shall be taken for unlawful transportation of minor minerals as per the provisions of the Act and these rules.*

(8) *Where the authorised officer has reason to believe that the weight recorded in the weighment slip is not correct, he may direct the person in charge of the carrier to take such carrier to the nearest electronic weigh bridge and take recourse to action for under-weighment.*

(9) *Where any person is found transporting any mineral and/or*



mineral products in contravention of the provision of these rules, any authorised officer may seize the mineral or its products alongwith any tool, equipment, carrier or any other things used in committing such offence and the person in-charge and/ or the owner of the carrier shall be liable for action under these rules.

(10) An authorised officer seizing illegally extracted, transported or stored mineral or its products, tools, equipments and carrier under these rules shall give a receipt of the same to the person from whose possession such things are seized.

(11) If the amount of fine and other sum imposed under these rules are not paid within the specified time, all properties seized shall be liable to be confiscated by an order of the court trying the offence.

75. Un-authorized Transportation of Minerals. - *Wherever a carrier is found being used for transporting any mineral in whatever form, without a valid weightment slip as required under sub-rule (2) of rule 74 or any excavation equipment is found being used or is found having been used for excavating any mineral in an unauthorised way, the same would be dealt with as under, -*

(i) where the carrier/excavation equipment is involved in violation of these rules for the first time, the said mineral would be liable to be seized alongwith the impounding of the carrier/excavation equipment which may be released by the authorised officer only upon realization of payment from the owner or person incharge or person in possession of the carrier/excavation equipment, of applicable royalty as well as compounding fee at a rate specified in the schedule. In case of failure to deposit such compounding fee by the owner or person in-charge or person in possession of carrier, action shall be taken under sub-section (1) of section 21 and section 22 of the Act; and

(ii) wherever a carrier/excavation equipment is involved in violation of these rules subsequently, the authorised officer shall take action as per sub-section (1) of section 21 and section 22 of the Act..”

16. A deep, and, circumspect study of the hereinabove extracted provisions, make imminent surfacings of the apposite legal landscape wherebys, the thereunders conferred powers in the officials of the Mining Department of the State of Punjab, rather is to ensure, that there is no illegal transportation of minor minerals concerned, thus into the State of Punjab, which but become ill-sourced from mining sites, which are located in a State other than the State of Punjab. Moreover, the legal landscape, as is borne therein also ensures the curbing(s) of unlawful transportation(s) of minor minerals concerned, in the trucks concerned, besides does ensure that, the weight of the minor minerals concerned, as carried in the trucks concerned, is in alignment with the weight thereof, as becomes mentioned in the invoice



concerned.

17. It is but in the wake of breaches being done to the legal contours, as set-forth in the above extracted rules, that an authorization is bestowed, upon the mining officers in the State of Punjab, to impound the vehicle concerned, wherein becomes transported any illegally excavated minor mineral concerned. The impounding of the said vehicle is yet amenable for its release being made by the authorized officer, but only on realization from the owner of the vehicle, thus of those levies, as become imposed upon the owner of the vehicle.

18. Stricto sensu from the legal contours (supra), as set-forth in the hereinabove rules, thereby the trite factum of the drivers of the impounded trucks, upon producing the X-Forms, before the officer of the Punjab Government, that thereby a valid authorization, thus became prima facie bestowed, upon the drivers of the impounded vehicles to drive their respective impounded vehicles into the territories of Punjab. However, yet apart therefrom the further issue is whether the deviation, as made by the drivers of the impounded vehicles onto a route other than, as became prescribed in the X-Forms, inasmuch as, despite the X-Forms declaring the consignee's destination to be Allowal, yet the impounded vehicles being taken to village Phide Kotakpura, rather is such a deviation, which becomes rather ill-countenanced by some other regulatory mechanism, and, that too for ensuring the curbing of the menace of illegal transportation, and, for also ensuring that the said deviation, does not ultimately ill-result in the consignee of the minor minerals concerned, as transported in the impounded trucks, thus through filing false monthly returns, rather ill-draws any untenable leverage therefrom. The said deriving of untenable leverage would



emanate, upon despite the consignee not receiving the minor minerals transported in the impounded trucks, his yet in his monthly returns reflecting, but the false fact qua his receiving them from the consigner, therebys there would but unnecessarily occur the ill-maintenance of stock in trade at the instance of the consignee. Moreover, it also appears, that therebys there would be an ill-countenancing of the errant conduct of the drivers of the impounded vehicles concerned, to with the *prima facie* consent of the owners of the impounded vehicles, thus make transportations of the minor minerals concerned, to a destination other than the one, as becomes mentioned in the X-Forms.

19. However, *prima facie* in terms of the legal landscape, set-forth in the rules (*supra*), the said deviation may *prima facie* constitute an illegal transportation of the minor minerals concerned, and, therebys *prima facie* the invocation of the rules (*supra*), against the impounded trucks, owned by the present petitioner, rather would be a well made invocation.

20. In proceeding to discover the regulatory mechanism to curb the above, this Court has also noticed, that apart from the rules (*supra*), *prima facie* leveraging an authorization in the officers of the Punjab Government, thus to impound the petitioner's trucks, rather the State of Punjab has also issued a notification bearing No. 3752/E-427854 dated 4.7.2023, whereunders becomes enshrined a dire necessity qua the issuance of confirmation receipt by the Department of Mines and Geology, Government of Punjab, to the vehicle owner/driver. The stated therein confirmation receipt is required to be containing the details in respect of the vehicle carrying the material, and, the destination where the said vehicle is to reach. The said notification is appended to the instant writ petition as Annexure R-3. Therefore, the said



notification (Annexure R-3) but obviously works as a supplement to the X-Forms, thus issued by the Department of Industries, Geological Wing, Government of Himachal Pradesh, wherein, there is an authorization bestowed, upon the owner of the vehicles concerned, to through the drivers concerned, make them ingress into the State of Punjab, but upto the destination, as mentioned in X-forms. However, reiteratedly to augment the said workable import of X-forms, Annexure R-3 becomes drawn by the State of Punjab, thus to ensure that there is no deviation from the route mentioned in X-Forms rather by the drivers of the vehicles concerned, to some other route, thus upon the drivers concerned, making ingresses of their respectively driven vehicles into the State of Punjab. As stated (supra), the above is to ensure the obviations qua emergences of the above ill-mishaps, and, resultantly also is to ensure that no fictitious entries become made in the books of accounts or in the e-rawangi portals, as maintained by the consignee concerned, whereby he may proceed to further ill-indulge in cyclically making further ill-transportations.

21. Be that as it may, the issuance of X-Forms by the Department of Industries, Geological Wing, Government of Himachal Pradesh, and, as maintained by the drivers concerned, are required to be online tallied with the e-rawangi portal, as maintained by the mineral concessionaires concerned, who respectively, thus are engaged in the excavation of the minor minerals concerned, or are engaged, thus in the manufacturings of grits therefrom. The said online tallying inter se the respective portals maintained by the respective minerals concessionaire concerned, respectively in the State of Himachal Pradesh, and, in the State of Punjab, and, also the necessity for making online tallying of the portals maintained,



thus respectively by the excavator of the minor minerals concerned, and, by the manufacturer thereof of grit, who become respectively located in the State of Himachal Pradesh, and, in the State of Punjab, is thus to further ensure that there is no illegal transportation of the minor minerals concerned, from the source mentioned in the X-Forms to some other source. In case the ill-activity (supra) is not curbed, thereby there would but necessarily emerge the ill-consequences of impetus being purveyed to the consignee of the minor minerals concerned, located in Punjab rather to prepare false monthly reports, and, to thereby also fabricate the accounts relating to the stock-in-trade maintained by the consignee, thus professing the apposite trade within the State of Punjab. The further ill-sequel thereof, is that, thereby he would evade the imposition of apposite levies, and, cesses upon him.

22. The above necessity of makings of online tallying inter se the relevant portals maintained respectively in the State of Punjab, and, in the State of Himachal Pradesh, and, as becomes embodied in Annexure R-3, thus appears to be in terms of paragraphs 34 and 35, as carried in a judgment passed by this Court on 22.12.2023, upon **CWP No. 6456 of 2020**, titled as **M/s United Mining Corporation versus State of Haryana and others**, paragraphs whereof become extracted hereinafter.

“34. Apart from the above, to ensure that there are no illegal transportings, of illegally excavated minor minerals concerned, by the mineral concessionaires, thereby the contesting respondent concerned, is directed to within two weeks from today, establish sub-border posts manned by not less than two officers not below the rank of mining officers, so that at the said sub-border posts, the apposite minor mineral(s) transported in the trucks concerned, thus become inspected,



and, thereafter the rawangi pass maintained by the driver rather is online tallied with the e-rawangi portal issued to the mineral concessionaire concerned.

35. Moreover, even at the border posts, the minor mineral transported in the trucks concerned, is required to be inspected, by the officer concerned, and, thereafter the rawangi pass maintained by the driver, is required to be online tallied with the e-rawangi portal.”

23. In consequence, therebys Annexure R-3 thus curbs all the above menaces, and, if in terms thereof, there was lack of compatibility inter se e-rawangi pass maintained at the portal assigned to the consigner by the Geological Department, Himachal Pradesh, with the portal maintained by the consignee in the State of Punjab, thereby the said incompatibility, thus prima facie leads to a conclusion, that the deviation of the route, as adopted by the drivers of the impounded vehicles from the route, as prescribed in X-Forms, thus was to ensure the assigning of ill-benefits (supra) to the consignee. The said ill-benefits would be, inasmuch as, his preparing false monthly reports, and, thereby his misappropriating the minor minerals, carried in the impounded vehicles onto his stock, and, therebys his also prima facie conniving with the consigner, to ensure, that therebys despite his stock not becoming justly enriched, through his receiving the minor minerals becoming transported in the impounded vehicles, rather his untenably adding the said unreceived minor minerals onto his stock, whereby reiteratedly his taking to evade the imposition of cesses, and, loyalties, upon him, and, therebys his becoming unjustifiably enriched.

24. Though, the learned counsel for the petitioner, has vehemently argued, that the impounding of petitioner's vehicles by the officers of the State of Punjab, has unsettled, and, disturbed his fundamental right to



practice his avowed, trade or profession, besides he has also argued, that the restrictions, as become imposed upon him, through the issuance of impugned show cause notices, are unreasonable restrictions, rather against his freely moving his goods from one federal unit to another federal unit, despite the drivers of the impounded vehicles possessing the X-Forms, rather at the relevant time. However, for the reasons to be assigned hereinafter, the said argument is bereft of any merit, and, is liable to be rejected.

25. The reason for drawing the above inference stems, from the factum, that the above extracted rules, which became employed by the State of Punjab, and, also when Annexure R-3, does carry, the holistic purpose of therebys the menance of illegal transportations of the minor minerals concerned, in the apposite vehicles, rather becoming curbed, besides when therebys the ill-practices (supra) being indulged into by the consigner, and, the consignee, inasmuch as, both prima facie colluding or conniving, thus to ensure that one or the other unjustifiably enriches himself, from the deviations being made to a route other than the one prescribed in X-Forms, do but also become curbed. Resultantly, if the said holistic purpose, behind the above extracted rules, also is the spirit behind Annexure R-3, besides when the makings of Annexure R-3 is in terms of the above extracted paragraphs, carried in the verdict (supra) made by this Court. Consequently, the apposite restrictions made by the Government of Punjab when are in terms of Annexure R-3, besides are in terms of the directions (supra), carried in the verdict (supra) made by this Court. In consequence, the said restrictions, as become carried in Annexure R-3 are both reasonable, and, just, nor they can be stated to be either unreasonable or capricious. In



sequel, it cannot be said that either the fundamental right of freedom of trade, and, business conferred upon the petitioner became infringed, nor it can be said that the restrictions as embodied in Annexure R-3, create an unreasonable restriction, upon the petitioner against his freely indulging in inter-state trade or commerce.

26. Lastly, though the learned counsel for the petitioner has submitted, that the mentioning of the destination in X-forms, as Gilco Stone Crusher Allowal, was a mere typographical error, and, that in fact, the said typographical error became corrected through Annexures P-3 and P-4. However, unless the said annexures became endeavoured to be complied with at the instance of the mining officers concerned, in the State of Himachal Pradesh, through compatible thereto corrections becoming made in the X-Forms issued to the drivers of the impounded vehicles, thereupon, the said made annexures are deemed to be suo motu or unilaterally made, and, thus do not carry any vigour. Resultantly, they do not support the contentions of the learned counsel for the petitioner, that the apposite deviations from the routes mentioned in X-Forms, rather does not attract against the impounded vehicles, thus the mandates, as enclosed in Rules (supra), and/or the one as becomes enclosed in Annexure R-3. The reason for making the above conclusion, is that, for lack of corresponding corrections being made in the X-Forms, or in the online e-rawangi portals maintained both by the mineral concessionaire concerned, in Himachal Pradesh, and, the one in the State of Punjab, thereupon the destinations, as mentioned therein were the ones which were required to be complied with, rather than theirs being deviated to some other destinations.



Final Order of this Court

27. In aftermath, this Court finds no merit in the instant writ petition, and, with the above observations, the same is dismissed. The impugned Annexure P-1 only at this stage, is prima facie maintained and affirmed. However, liberty is reserved to the petitioner to recourse such remedies, as deemed fit against the said annexures. On the said motion being made by the petitioner, an independent objective decision shall be made by the authority concerned.
28. No order as to costs.
29. The pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

May 27, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No