

**107 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 12123 of 2020
Date of decision: 26.08.2020**

M/s Muskan Trading Company

...Petitioner

Versus

State of Haryana and another

...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ashok Kumar Verma**

Present: Mr. Ashish Aggarwal, Advocate with
Ms. Malika Aggarwal, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

...

Rakesh Kumar Jain, J. (Oral)

Case taken up through Video Conferencing.

The petitioner has prayed for the issuance of a writ in the nature of certiorari to quash the impugned order dated 06.08.2020 passed by respondent No.2.

In brief, the petitioner, a proprietorship firm, had applied for a licence under the provisions of the Haryana Regulation and Control of Crushers Act, 1991 (for short 'the Act') from the Department of Mines and Geology for running a stone crusher situated in village Baded, District Nuh. The petitioner was initially granted licence to operate the stone crusher owned by it from 26.03.2010 to 25.03.2013. Thereafter, the petitioner applied for renewal of licence w.e.f. 26.03.2016 to 25.03.2019, was granted vide order No.Glg/Hy/SC/GGN/L-417 dated 22.09.2016 which was to expire on 25.03.2019. The licence was issued to the petitioner with the

following conditions.

“(a) The licensee shall observe the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and the rules and notifications framed or issued there under. The licensee shall submit annual consent of Haryana State Pollution Control Board regularly.

(b) The licensee shall not pay wages less than the minimum wages prescribed by the Central or State Government from time to time under the Minimum Wages Act, 1948, to the works employed in the crushing operations.

(c) The licensee shall restore to the extent possible flora, if destroyed, by the crushing operations and shall plant trees around the periphery of the crusher to the satisfaction of the Director.

(d) The licensee shall immediately report to the Deputy Commissioner and Assistant Mining Engineer or Mining Officer of the district concerned about any accident which may take place during the course of crushing operations resulting in serious bodily injury.

(e) The license shall indemnify the State Government against the claims of the third party.”

Counsel for the petitioner has submitted that the stone crusher was inspected on 05.07.2018 by Central Empowered Committee (CEC) constituted by the Hon'ble Supreme Court in the Writ Petition (C) No. 467 of 2014- Bandhua Mukti Morcha Vs. Union of India. As per report of the CEC, the stone crusher was found being run by M/s Shiv Grit Suppliers in its own name but without a valid licence. The Director/respondent No.2 served a show cause notice dated 12.07.2018 to the petitioner, to which reply was filed by the petitioner on 17.07.2018, in which, it was categorically averred that the stone crusher is owned by the petitioner but it

(Rajasthan) by way of Rent Deed which came into force w.e.f. 01.07.2017 and was valid till 30.06.2022. The said Rent Deed was cancelled when the petitioner came to know that it has committed a mistake of letting out its stone crusher to an entity having no licence for operating/running the stone crusher. The issue regarding the cancellation of the licence of the petitioner, after receiving the reply to the show cause notice was decided by the Director, Mines and Geology, Haryana vide its order dated 04.09.2018 in which he had categorically found that the tenant i.e. M/s Shiv Grit Suppliers had obtained separate Tin/GST number and paid tax as per law and it was nowhere observed by respondent No.2 that the tenant had been using the licence of the petitioner for the purpose of operating/running the stone crusher. The relevant portion of the order passed by respondent No.2 on 20.09.2018 is reproduced as under:-

“13. After hearing, their submission and having gone through the written submissions/documents, it is clear that it is a case of mistake on the part of M/s Muskan Trading Co. by permitting to run the crusher by M/s Shiv Grit Suppliers on the strength of crusher license granted in their favour. As they have now corrected the status by canceling the rent agreement and undertaking the operations themselves, they have remedy the admitted breach. Hence, it is ordered that the suspension of crushing operations be revoked and they may commence their operations strictly in accordance with law / permission under stone crusher licence.

14. However at the same time as per Section 3 of the Stone Crusher Act, 1991, no persons shall run the crusher in the state without having a stone crusher licence. The stone crusher at said site was operated by M/s Shiv Grit Suppliers without having a stone crusher licence. Hence, it is a clear violation of Section 3 of the Stone Crusher Act, 1991. Even further M/s Muskan Trading Company, Village Baded, Tehsil

Firozpur Jhirka, District Nuh by letting out the crushing and permitting running of crusher on the strength of crusher licence granted to them facilitated M/s Shiv Grit Suppliers in carrying out said volition. Hence, both of them are liable for penal action under Law of court.

15. *You are aware that the Section 12 of the Crusher Act, 1991 provides that whoever contravenes any of the provisions of the Section 3 of the Crusher Act, 1991 shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to a fine which may extend to ten thousand rupees. The action for such violation can be taken by the Hon'ble Court upon a complaint filed in writing by Director or an officer authorized by him. The powers for filing complaint for the offence committed by any persons under Section 3 read with Section 12 of Crusher Act, 1991 has been delegated to the Assistant Mining Engineer/ Assistant Geologist/Mining Officer posted in the district level on 16.03.194.*

16. *Accordingly, you are directed to immediately file a complaint before the Civil Court, Nuh against M/s Shiv Grit Supplier village Jilahera Tehsil Pahari District Bharatput Rajasthan through partner Sh. Mukesh Chand Sharma S/o Sh. Ram Gopal Sharma R/o 139/1, Maniram Vas-3, Kosi Kalan, Tehsil Chata District Mathura Uttar Pradesh for operating the crusher without having obtained stone crusher licence as required under 3 of Stone Crusher Act, 1991 and also against M/s Muskan Trading Company village Baded, District Nuh a proprietorship firm through Sh. Rahis Khan S/o Sh. Ajmat Khan R/o village Baded Tehsil Punhana District Nuh, Haryana for facilitating M/s Shiv Grit Supplier in operation of the crusher by letting out the crusher for which stone crusher license was granted to them.*

17. *Further, you are also directed to ensure that M/s Muskan Trading Company Village Baded, District Nuh shall be allowed to resume its operation subject to condition that*

strict compliance of the related provisions/law shall be ensured and subject to outcome of complaint proposed to be filed as above.”

As a result of the aforesaid order, the Mining Officer, Gurugram/Nuh filed a complaint under Section 12 of the Act for violation of Section 3 of the Act, before the Illaqa Magistrate, District Nuh, which is pending. It is pertinent to mention that the order of respondent No.2 dated 20.09.2018 which was though appealable under Section 10 (2) of the Act was not challenged by the respondent either by an appeal or by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and the said order has attained finality. Since the mistake committed by the petitioner was rectified, therefore, the petitioner had again applied for renewal of the licence which was granted by respondent No.2 vide order dated 11.06.2019 w.e.f. 26.03.2019 to 25.03.2022 on the same terms and conditions on which it was earlier granted. Thereafter again, a show cause notice was issued on 20.12.2019 to the petitioner for the same act and conduct much less the alleged violation of the licence by letting out the premises of the stone crusher to an entity having no valid licence to operate.

Counsel for the petitioner has submitted that before any reply could have been filed, the respondent No.2 has passed the impugned order dated 30.07.2020 by which the licence issued to the petitioner has been cancelled and aggrieved against the said order, the present petition has been filed.

It is submitted that the petitioner has not violated the terms and conditions of the licence and in this regard he has referred to Rule 5 of the

Rules which is reproduced as under:-

“Rule 5. Terms and conditions of a licence Section 3.-

(1) Every licence shall be subject to the following terms and conditions:-

- (a) A licensee shall observe the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and the rules and notification framed or issued thereunder:-*
 - (b) the licensee shall not pay wages less than the minimum wages prescribed by the Central or State Government from time to time under the Minimum Wages Act, 1948, to the workers employed in the crushing operations;*
 - (c) the licensee shall restore to the extent possible flora, if destroyed, by the crushing operations and shall plant trees around the periphery of the crusher to the satisfaction of the Director:*
 - (d) the licensee shall immediately report to the Deputy Commissioner and Assistant Mining Engineer or Mining Officer of the district concerned about any accident which may take place during the course of crushing operations resulting in serious bodily injury; and*
 - (e) the licensee shall indemnify the State Government against the claims of the third party.*
- (2) The Director may impose any such further conditions as he may deem fit.*
- (3) If the licensee commits a breach of any conditions, the Director shall give notice to the licensee requiring him to remedy to breach9es) within 30 days from the date of receipt of the notice and if the breach is not remedied within such period, the Director may without prejudice to any proceedings that may be taken against the licensee cancel the licence.”*

It is submitted that as per Section 3 of the Act, no person shall

install or run any crusher in any area within the State of Haryana unless he obtains a licence or gets his licence renewed from the Director under the Act on such terms and conditions as may be prescribed. He further submits that Section 4 of the Act deals with the grant or refusal of a licence and Section 12 provides that in case of violation of any of the provisions of Section 3 of the Act, the violator shall be punished with imprisonment for a terms which may extend to two years and shall also be liable to pay a fine to the extent of ₹10,000/-. He further argued that the power to grant licence or its refusal is provided under Rule 4 and terms and conditions of the licence is provided under Rule 5. Counsel for the petitioner has argued that Rule 5 has three parts i.e. Rule 5(I) licence has to be issued subject to the terms and conditions mentioned in the said provision; Rule 5 (2) the Director has been given powers to impose any other conditions to under Rule 5(I) and Rule 5(3) in case the licensee commits a breach of any condition, the Director may cancel the licence but before cancelling the licence, he shall have to issue notice to the licensee requiring him to remedy the breach within 30 days from the date of receipt of the notice and if the breach is not remedied within such period, then the licence can be cancelled. It is argued that in the present case, firstly, letting out of the stone crusher to an entity having no licence to operate/ run the stone crusher was not a condition of the licence which could have been otherwise laid down by the Director, in terms of Rule 5(2), if it was not provided in the rules in terms of Rule 5(I) and secondly, the petitioner had rectified the breach of letting out the premises to an entity having no licence, within 30 days from the date of receipt of show cause notice by cancellation of the rent deed executed in favour of its tenant i.e. M/s Shiv Grit Suppliers. It is

also submitted that once there was no breach, the Director could not have initiated the proceedings again as it had no jurisdiction much less the power to review its earlier decision.

He has relied upon the decision of this Court in the case of *Gurjinder Singh and another Vs. State of Punjab and another, 2016(3) R.C.R. (Civil) 342*; and the decision of Hon'ble Supreme Court in *Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., 2008 (14) SCC 171* and *Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others, 2011(1) R.C.R. (Civil) 216*; in support of his submissions.

On the other hand, learned counsel appearing on behalf of the respondent has submitted that the licence was given to the petitioner to run the stone crusher owned by him and it could not have let it out to somebody not holding a valid licence which is required in terms of Section 3 of the Act. The petitioner knew that the tenant will operate the stone crusher in his own name. It is submitted that the action has been taken because of an information by the CEC appointed in terms of the order passed by the Supreme Court in the **Bandhua Mukti Morcha's case (supra)**. However, he could not deny that there was no condition in the licence that if the petitioner lets out his premises to an entity having no licence to operate then his licence shall be cancelled. He also could not deny that the order passed by the Director, Mines and Geology Department, Haryana on 20.09.2018 (Annexure P-7) rectifying the mistake committed by the petitioner was open to challenge by way of an appeal or even by way of a writ petition but no such proceedings were carried out and the said order was allowed to become final. He also could not deny that after the dispute between the parties had

already came to an end by the order dated 20.09.2018 (Annexure P-7), the same authority had no jurisdiction to review its earlier order to start proceedings *de novo* specially when the power of review is not conferred upon it by the statute.

We have heard counsel for the parties and perused the record with their able assistance.

The first question which requires consideration as to whether a licence issued under Section 3 of the Act can be cancelled under Rules 5(3) of the Rules if there is no breach of condition on the part of the licensee? In the present case, the licence was issued to the petitioner with the conditions mentioned under Rule 5 (1). It is an admitted case that the petitioner did not violate any of the conditions mentioned in Rule 5 (1). It is also an admitted position that the Director / respondent No.2, who though had the jurisdiction to impose further conditions at the time of issuance of licence but in the present case, there is no such condition imposed by respondent No.2 that in case the licensee lets out the premises (stone crusher) to a tenant who does not have a valid licence issued under Section 3 of the Act then the licence issued to the licensee shall be cancelled. Thus, in view thereof, the first question is hereby decided to the effect that if the licensee has not violated the conditions imposed under Rule 5(I) of the Rules then his licence cannot be cancelled. The second question would be as to whether a licensee commits a breach of condition which is imposed under Rule 5(I) and remedy the breach within a period of 30 days of the issuance of notice by the Director, whether the Director would still have the jurisdiction to cancel the licence? A plain and simple reading of Rule 5(3) is the answer to this question in which it is provided that licensee to

whom the licence has been given with certain conditions may breach some of the conditions but the scheme of the rules provides that if a show cause notice is given or breach committed by the licensee is brought to its notice by the Director and licensee rectifies the breach or remedy it within a period of 30 days from the date of receipt of notice then its licence cannot be cancelled. In the present case, show cause notice was given to the petitioner, intimating it that it had let out the premises (stone crusher) to an entity as a tenant, having no valid licence issued under Section 3 of the Act to operate. As soon as the petitioner came to know about its mistake, it cancelled the lease executed in favour of its tenant and retrieved the possession of the stone crusher from him and did not allow him to operate any further. In such circumstances, the Director had no jurisdiction to cancel the licence. The third question would be as to whether the order dated 20.09.2018 (Annexure P-7) passed by the Director, allowing the remedy of the breach, if any, and in the meantime, on 11.06.2019, licence of the petitioner was further renewed from 26.03.2019 to 25.03.2022 by the Director, himself, the said order can be challenged by reopening the same issue?

In this regard, we are of the considered opinion that the doctrine of finality of the order shall apply to this case because the order was open to challenge by way of an appeal or by way of a writ petition before this Court but the respondent did not choose to challenge the order dated 20.09.2018 which had become final between the parties. The next question shall be as to whether respondent No.2 has acted beyond his jurisdiction in reopening of the case in the garb of review? It is well-settled that power of review is not inherent. In this regard, the judgments relied

upon by the counsel for the petitioner, referred herein above, are applicable and therefore, we hold that if the authorities do not have the statutory power of review, it cannot review its own order by exercising inherent power. The last question would be as to whether the petitioner has a remedy of an appeal in terms of the provisions of Section 10 of the Act? In this regard, counsel for the petitioner has submitted that though the remedy is there but the said remedy is useless because the appeal shall lie before the Secretary of the Department, whereas, the impugned order has been passed by respondent No.2 after taking his approval.

Thus, we are of the considered opinion that in such circumstances, the writ petition filed by the petitioner is maintainable. Hence, in view of the above discussion, the writ petition is allowed and the impugned order dated 06.08.2020 (Annexure P-11) is hereby quashed though without any costs.

[RAKESH KUMAR JAIN]
JUDGE

[ASHOK KUMAR VERMA]
JUDGE

26.08.2020

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