IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH.

(I) CRM-M-23190-2020
Date of decision : 04.02.2021

M/s K.C. Stone Crushing Co. & others ....Petitioners

Versus

State of Haryana & others ......Respondents

(II) CRM-M-36757-2020
Date of decision : 04.02.2021

Mohammad Vakil ....Petitioner

Versus

State of Haryana & others ....Respondents

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Sameer Sachdeva, Advocate, counsel for the Petitioner.
(in CRM-M-23190-2020)

Mr. Anshul Mangla, Advocate, counsel for the Petitioner.
(in CRM-M-36757-2020)

Mr. Ankur Mittal, Addl. A.G., Haryana for State.

(Proceedings conducted through video conferencing)

* * * * *

<u>Gurvinder Singh Gill, J.</u>

1. Both the above-mentioned petitions are being taken up together, being identical on facts, wherein common questions of law are being raised.

2. For the sake of brevity, facts of only one of these cases are being noticed i.e. of M/s. KC Stone Crushing Company's case, which may be stated chronologically as follows:

1.3.2020 : A truck bearing registration no. HR-55-R-8854 was intercepted by Mining Officer in the area of Gurugram, while the same was carrying *"Rori"*(tiny pieces of stones or gravel). Since the driver could not produce any document justifying possession and transportation of the aforesaid mineral, the truck in question was seized by the Mining Officer, vide order dated 1.3.2020(Annexure P-6) in terms of provisions of Rule 104 of The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012 (hereinafter called as the Mining Rules 2012). The petitioner was asked to pay an amount equal to 50% of the showroom value of the truck in question for its release in accordance with order dated 5.4.2019 passed in OA No. 360/2015 by National Green Tribunal, New Delhi(hereinafter refered to as NGT).

11.5.2020 : The petitioner, instead of paying the penalty as imposed, approached this Court by way of filing CRM-M-12123-2020 wherein it was inter-alia contended that he cannot be made to pay an amount to the tune of 50% of the value of the truck as the National Green Tribunal, vide order dated 19.2.2020 had revised the said rates which would be applicable to the case of the petitioner since his truck was seized after 19.2.2020. This Court, vide order dated 11.5.2020 (Annexure P-8), disposed of the petition while directing the Director, Department of Mines and Geology, Government of Haryana to look into the matter and to dispose of a representation moved by the petitioner within 10 days.

9.6.2020 : The representation moved by the petitioner was decided by the Director vide order dated 9.6.2020(Annexure P-10). During the course of said proceedings the petitioner had produced a Transit Pass i.e. *'e-Ravaana'* dated 1.3.2020 pertaining to transportation of 17 M.T. of *"Rori"*. However since the truck in question was found to be carrying 23 M.T. of *"Rori"* as against the bill of 17 M.T., the Director held that transporting excess *"Rori"* would amount to illegal transportation of the excess mineral and thus the truck, in any case, was liable to be seized. The Director, however ordered that the truck could be got released by paying the penalty under the 2012 Mining Rules 2012 and the compensation amount as per the latest order dated 19.2.2020 passed by NGT.

24.7.2020 : The petitioner challenged the aforesaid order dated 9.6.2020 before Appellate Authority but the said appeal was dismissed vide order dated 24.7.2020(Annexure P-1), which has been challenged by way of filing instant petition.

3. The learned counsel for the petitioner while assailing the impugned order has broadly made the following submissions:

(i) that infact it is not a case of illegal mining as the transit-pass i.e. *'e-Ravaana'* was produced before the authorities by the owner subsequently which is not disputed. It has been submitted that the respondent authorities upon being shown the *'e-ravaana'* have later built up a new case of excess loading of mineral though there was no such mention in the Seizure Order dated 1.3.2020(Annexure P-6);

(ii) that the amount sought to be realised as penalty from the petitioner is extremely on the higher side which the petitioner is unable to pay and that he can not be forced to compound the matter so as to deprive him an opportunity to contest the allegations as he does have a very good case;

(iii) that the act of the respondents in neither releasing the truck in question despite a period of more than 9 months having elapsed nor even lodging any FIR and keeping the matter in limbo is high-handedness on part of the authorities as the truck in question is deteriorating due to its disuse and vagaries of weather. It has been submitted that had the authorities lodged FIR, the petitioner could not only have contested the allegations but could also have moved an application for release of the truck on *'superdari'* which he can not move now as the Court is not seized of the matter, the FIR/complaint not having filed;

(iv) that retention of the truck by the authorities for an indefinite period virtually amounts to confiscation which the authorities concerned are not competent to do as it is only under the orders of the Court that a vehicle may be confiscated in terms of provisions of section 21(4-A) of The Mines and Minerals (Development and Regulation) Act 1957 (hereinafter referred to as MMDR Act).

4. Opposing the petition the learned State counsel has submitted that once the vehicle in question was seized in terms of provisions of Rule 104 of Mining Rules 2012, the petitioner has an option of compounding the offence and in fact the petitioner was extended an offer to get the truck released by way of payment of penalty and compensation in terms of order dated 19.2.2020 passed by NGT, but the petitioner himself has not come forward for getting his truck released. It has been submitted that NGT, taking serious note of the manner in which ecology and environment is being damaged by mining mafia had directed imposition of the deterrent amounts as compensation. It has further been submitted that the orders passed by NGT including order dated 19.2.2020 for imposing deterrent fine have duly been approved by Hon'ble Supreme Court and it has also been clarified that the vehicle in question cannot be released without payment of penalty. It has, thus, been submitted that the petitions deserve to be dismissed.

5. The rival contentions raised before this Court give rise to the following questions which need to be addressed:

(i) Whether in a case of transportation of mineral in excess of what is authorized as per Transit Pass, the person transporting the same can be proceeded under Rule 104 of Mining Rules 2012 which basically deals with violation regarding mining and not strictly with incorrect weighment or transportation?

(ii) Whether a vehicle seized while carrying mineral illegally can be detained for an unreasonable period or indefinitely upon non-payment of the imposed penalty, without initiating proceedings either for prosecuting the offender or for confiscating the vehicle in question?

(iii) Whether release of vehicles on *"superdari"* in such cases is absolutely barred?

6. In order to address the aforesaid issues, the scheme of the Act and the Rules framed thereunder needs to be borne in mind. The Mines and Minerals (Development and Regulation) Act 1957 (hereinafter referred to as MMDR Act) was enacted for the purpose of development and regulation of mines and minerals under the control of the Union. The MMDR Act provides that any excavation of mineral without any valid mineral concession granted by State is illegal mining. It further provides that no mineral shall be transported or stored except in accordance with provisions of the MMDR Act. The general prohibitions are contained in section 4 of the MMDR Act which reads as follows:

4. Prospecting or mining operations to be under license or lease. –

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting license or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines,][the Atomic Minerals Directorate for Exploration and Research][of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of [clause (45) of section 2 of the Companies Act, 2013, and any such entity that may be notified for this purpose by the Central Government:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.

(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting license or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting license or mining lease.

7. The penalties for violation of provisions of section 4 are provided in Section 21 of MMDR Act which reads as under

21. Penalties.—

(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

8. As per section 22 of MMDR Act, no court can take cognizance of an offence under the Act or the Rules framed thereunder except upon a complaint made in writing by an authorised person. Section 22 is reproduced below:

22. Cognizance of offences. –

No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

9. Section 23A of the Act provides that an offence punishable under the Act can be compounded by the person authorized under Section 22 of the Act, who is to make a complaint to the Court with respect to that offence. Section 23A reads thus:-

23A. Compounding of offences –

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

> *Provided* that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.
>
> (2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the full offender, if in custody, shall be released forthwith.

10. Section 23-C vests the State Government with power to make rules for effective implementation of the Act for preventing illegal mining transportation and storage of minerals. The State of Haryana has framed such rules known as the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012. It is Rule 98, 99, 101, 102, 104 and 106 which come into play in the matter in hand which shall be refered to while discussing the issues individually, as raised above.

11. When this matter was taken up earlier and had been partly heard, this Court had put some queries to the State counsel and requested him to furnish some information as regards the procedure being adopted by the mining authorities and as to under which specific rule such power is invoked. The State has filed detailed reply wherein the aforesaid queries have been addressed. The queries put and the specific reply filed by the State to the same is as under :

Query 1: When a vehicle, while in transit, is seized by the Mining Officer, under what provisions of law, the vehicle is kept in Police Station?

Reply : *The Rule 101(6)(iii) authorises the officer in charge to direct that the carrier along with the mineral be kept in police station or check post or barrier of the concerned officer .*

Query 2 : At what stage, and by whom, the option of compounding is given to such person whose vehicle is seized and as to under which provisions of law such option is extended?

Reply : *Option of compounding is given under Rule 101(5) of the Mining Rules 2012 wherein the person in charge of the carrier can deposit the penalty in accordance with the Rule 104, failing which under Rule 101(6)(i) and (v) vehicle is seized and option is given to the owner or in charge of the carrier to either pay the penalty or face criminal action of registration of FIR.*

Suffice to add here that, the time. Given for compounding the offence is one month, which can be easily inferred from Rule 101 (10) that provides that the seized properties shall be liable to be confiscated by an order of the court, if the amount of fine and the penalty imposed is not paid in one month.

Further the time period given for launching the criminal prosecution is 3 months as provided under Rule 106, which is reproduced herein below;

106. Offences cognizable only on written complaint.

No Court shall take cognizance of any offence punishable under these rules except upon a complaint in writing made by the Director or any other officer authorised by him to the police in this behalf within three months of the date on which said offence is alleged to have been committed.

Both the action of confiscation and the penal action can be taken together as such there is no bar that at a time one course of action is to be chosen over another.

Query 3 : What happens if the compounding fee or the fine is not paid by the owner and as to whether any time frame is fixed for payment of such compounding fee/fine?

Reply : *In this regard, the discussion made with regard to the earlier question is relevant and the same is reiterated here. To sum up, the time period to pay the compounding fee is one month, failing which the vehicle shall be confiscated and the penal action will be launched.*

Query 4 : Can such vehicle which is seized and regarding which the owner does not pay any compounding fee be kept in the Police Station for an indefinite period? What are the relevant provisions with respect to such period?

Reply : *In view of Rule 101(10), the question of keeping the vehicle indefinitely in the Police Station does not arise as the seized vehicle is liable to be confiscated after one month, if the fine is not paid.*

Query 5 : Are the provisions of Rule 101(6)(v) of Mining Rules 2012 resorted to by the Mining Officer and if so at which stage? Are these specific provisions resorted to in every case? In other words, when is an action taken by the Mining Officer for registration of an FIR. Is there any time frame?

Reply : *Though, the Rules itself do not directly provide for any time frame for the registration of FIR, however if we read the provision mentioned in Rule 101(6)(v), 101(10) and 106 of the Mining Rules, it can be easily inferred that the time given to compound the offence is one month as provided under Rule 101(10), failing which the vehicle is liable to be confiscated. As far as the registration of FIR is concerned, same can be resorted to in view of Rule 106 which provides that where any offence under these Rules is committed, the Court can take cognizance of the same, on an application moved by the Director or any officer authorised to the police within three months from the date when the offences alleged to have happened.*

Query 6 : At what stage, the Court is informed about the seizure of the vehicle? Is there any special provision in this regard under the rules as is there in Rule 54(5) of Rajasthan Mines and Mineral Concessions Rules, 2017, which is specifically for the purpose that the Mining Officer does not unnecessarily keep the vehicle detained for a long period.

Reply : *As per Rule 101(10), the confiscation is done only by way of order of the Court and if any complaint is made under Rule 106, then the Court can take cognizance of the same.*

12. Bearing the scheme of the Act and the Rules framed thereunder and the stand taken by the State, the three questions raised in the instant case are being discussed individually hereinunder.

Question (i) *(regarding under-weighment of mineral)****:***

13. In the instant case, though the driver of the truck bearing registration No. HR-55-R-8854, namely Nasroo could not produce any document pertaining to transportation of the *"Rori"* and consequently the truck was seized in terms of Rule 104 of Mining Rules 2012. However, it appears that subsequently a Transit Pass(*e-Rawanna* no. CRU2167132898 generated on 1.3.2020 at 10.48 AM) (Annexure P-5) alongwith Transit Pass of another truck was produced by the owner which has been accepted by the authorities as there is no time recorded in respect of interception of the truck by mining authorities in Seizure Memo(Annexure P-6). Vide order dated 9.6.2020 (Annexure P-10), the Director General, while disposing off a representation moved by the petitioner, accepted the fact that there was a Transit Pass in respect of the truck in question but held it to be a case of transportation of mineral in excess of the Transit Pass as the truck upon its weighment, was found to be loaded with 23 MT(metric ton) of mineral as against the Transit Pass of 17 M.T. It was thus held that the excess mineral i.e. mineral weighing 6 M.T. was illegally procured and consequently the truck, in any case, was liable to be seized.

14. Section 4 of the Act prescribes that any kind of prospecting or mining operation has to be conducted under a licence or lease as may be granted under the Act by the authorities concerned. Violations entail penalties and punishments prescribed in section 21 of the Act. For effective implementation of the Act, the State of Haryana framed rules called as

Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules 2012. While the violations pertaining to illegal transportation are dealt with under Chapter 15 of the Rules, the violations in respect of illegal mining are dealt with under Chapter 16. The relevant Rule pertaining to illegal transportation reads as under :

CHAPTER 15

TRANSPORTATION OF MINERALS

(Rule 98 to 102)

102. Consequences of violation. –

Wherever a carrier is found to be transporting any mineral, in whatever form, without a valid mineral transit pass as required under rule 98, and/ or a valid mineral transport permit as required under rule 99, he would be dealt with as under,

(i) Where a carrier is found to be indulging in violation of the rules for the first time, the said mineral would be liable to be forfeited along with the impounding of the vehicle, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii) Wherever a carrier is found to be indulging in such violation for the second time, the said mineral would be liable to be forfeited along with the impounding of the vehicle for a minimum period of three days and released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) Wherever a carrier is found to be indulging in such violation for the third time, the said mineral would be liable to be forfeited alongwith the impounding of the vehicle for a period of minimum ten days, and for relase shall entail payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall be twenty five thousand rupees;

(iv) Wherever a carrier is found to be indulging in such violation for the fourth time or more, the officer concerned shall register an FIR and handover the carrier along with the mineral to the police. The penalty, fine and punishment for the offence shall be as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.

15. The relevant Rule pertaining to illegal mining reads as under :

CHAPTER 16

ILLEGAL OR UNAUTHORIZED MINING AND CONSEQUENCES

(Rule 103 to 106)

104. Consequences of illegal or unauthorized mining . –

Any act of illegal or unauthorised mining shall be liable to the following:

(i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorized operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii) for a second time violation, ……. ……. …… .... ……. …… ……. …… …… ……. ..... … ..... ……. ……. ……. ……. a fine which shall not be less than fifteen thousand rupees;

(iii) wherever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.

16. Though as per Rule 102, cases of illegal transportation i.e transporting mineral without a valid transit pass or transit permit are to be dealt under said rule but a perusal of Rule 98(6) also shows that an act of transporting mineral without a valid mineral transit pass is to be construed as a case of transporting mineral which has been *'illegally obtained'*. Rule 98(6) rule reads as follows:

Rule 98(6) : Any transport carrier found to be carrying or transporting mineral, in whatever form, without a valid mineral transit pass shall be construed to be carrying/transporting the mineral ***illegally obtained*** and shall be subject to such consequences as specified under these rules.

(emphasis supplied)

17. As per the aforesaid deeming clause incorporated in Rule 98(6), a case of transportation *"without a valid mineral transit pass"* is to be held as a case of mineral *"illegally obtained"*. A mineral illegally obtained or procured would mean illegally mined and which would attract penalty under Rule 104. Such type of deeming clause can be well appreciated for the purpose of making the provisions stringent keeping in view the purpose required to be served by the Act. However this Court finds that in fact even Rule 102 prescribes penalty for transportation of mineral without a valid mineral *'transit pass'* or without a valid mineral *'transport permit'* which is some kind of overlapping as regards the provisions which would be attracted in case mineral is found to be transported without a transit pass. In other words the question would be as to whether in a case of transportation of mineral without a Transit-Pass, such person is to be imposed penalty in terms of Rule 102 or as to whether with the aid of Rule 98(6) he is to be proceeded under Rule 104.

18. Still further, this Court finds that although as per Rule 101(7) a situation where the mineral being transported is under-weighed i.e. the weight mentioned in Transit Pass is found to be less than what is actually being transported, is visualised and it is mentioned that action prescribed under the Rules for under-weighment is to be taken, but no specific provision can be found in the Mining Rules 2012 for imposing penalty in case of such under-weighment.

19. In the absence of there being any specific provision to deal with a case of underweighment as in the instant case, the excess mineral being carried

without transit pass has to be dealt with either under provisions of Rule 102 or Rule 104. In the instant case there being no valid Transit Pass for 6 metric tons of *"Rori"* which was in excess, the same has to be held to be illegally procured or illegally mined. Though this Court could appreciate that there could be some room for error in weighment on account of some faulty callibration in weighing machines but such margin of error could only, at best be restricted to 2% or 3%, whereas in the instant case the excess *"Rori"* being carried was more than 35% of what was permitted as per the Transit Pass. The petitioner on account of such significantly excess weightage cannot attribute the same to any error in weighment. Consequently, as per scheme of the Rules, the excess mineral being transported, has to be construed as 'illegally obtained' by virtue of Rule 98(6), and thus would be dealt with under provisions of Rule 104 and not Rule 102. The seizure order dated 1.3.2020(Annexure P-6) in CRM-M-23190-2020 can not be said to be suffering from any infirmity on said count. For the same reasons, the seizure order dated 7.6.2020(Annexure P-2) in CRM-M-36757-2020, wherein the tractor-trolley was found to be carrying 7160 M.T. of mineral in excess of the 8 M.T. for which Transit-Pass had been issued, can not be said to be illegal. Question (i) stands decided accordingly.

Question (ii) *(regarding indefinite detention of vehicle)***:**

20. The procedure for checking and inspection of vehicles carrying minerals and imposition of penalty and their seizure is prescribed in Rule 101 of Mining Rules 2012 which reads as under:

101. Inspection of minerals and its transportation at checkposts or during transit.-

(1) The Director or the State Mining Engineer or the Collector of the district concerned may direct the Officer-in-charge of the district concerned to set-up or establish permanent or temporary check-posts or erection of barrier or both, at

inter-state entry or exit points and any other places by an order in writing with a view to checking of the transportation of minerals raised without lawful authority;

(2) Any authorised officer or official(s) may check any carrier carrying minerals, at any place and the person in-charge of such carrier shall present a valid mineral transit pass issued and a mineral transport permit for such vehicle as may be demanded by said officer or official(s).

(3) At every check-post or barrier set up under sub-rule (1) or at any other place when so required by the officer-in-charge of the check-post or the barrier or any other authorised officer, the person in-charge of the carrier shall stop the same for examination of the mineral or its products in transit and co-operate for inspection of all records and documents relating to minerals or its products in possession of such person.

(4) The person in-charge of the carrier shall, if so required by officer-in-charge of the check-post or the barrier or any other authorised officer, disclose his name and address as also that of the owner of the carrier, the name and address of both the consigner and the consignee, and the particulars of the place from where the mineral was extracted and dispatched and any other relevant details. After checking the minerals or its products and carrier, if the authorised officer or the officer/ official(s) in-charge of the check-post is satisfied that the mineral or its product is being transported under a valid mineral transit pass and a transport permit, the authorised officer or official(s) in-charge of the check-post shall put his seal and signature on the transit pass and let such carrier proceed without any hassles.

(5) If the authorised officer/ official in-charge of the check-post or any other authorised officer has reasons to believe that the mineral or its products are being transported under a mineral transit pass which is suspected to be tampered or transportation is found without any valid transport permit, the authorised officer/ official(s) in-charge of the check post, shall take action as provided under rule 104 of these rules.

(6) If the person in-charge of the carrier refuses to pay the penal amount under sub-rule (5), the officer in-charge of the check-post or the barrier or the authorised inspecting officer shall –

(i) have the power to seize the mineral along with such carrier in transit;

(ii) give a receipt of such mineral and carrier seized by him to the person from whose possession or control it is seized;

(iii) direct the person in-charge of the carrier to carry the mineral and also the carrier to the nearest police station or check-post or barrier of the concerned department;

(iv) seize the carrier and take the same in his possession if the person in charge of the carrier refuses to carry the mineral and the carrier to the nearest police station or check-post or barrier of the department;

(v) give an option to the owner or in-charge of the carrier to either compound the offence by paying the penalty amount or face criminal legal action of registration of an FIR and further proceedings where a carrier together with the mineral is seized by an authorised officer .

(7) Where the officer-in-charge of the check-post or any other authorised officer has reasons to believe that the weight recorded in the mineral transit pass 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 prescribed for under-weighment under these rules.

(8) Where any person is found transporting any mineral and/or mineral products in contravention of the provision of these rules, any authorised inspecting officer may seize the mineral or its products along with any tool, equipment, carrier or any other things used in committing such offence and the driver and/ or the owner of the carrier shall be liable for punishment under rule 105 of these rules, irrespective of the place from where the minerals have been raised.

(9) Any authority 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.

(10) All properties seized shall be liable to be confiscated by an order of the court trying the offence, if the amount of fine and other sum imposed are not paid within a period of one month from the date of order.

(emphasis supplied)

21. Sub-section (21-A) of Section 4 of MMDR Act which deals with confiscation reads as under :

Section 4(21A)

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

22. From the scheme of the Act, it is apparent that while the authorised officers/officials have been made competent to seize the illegally mined or illegally transported mineral alongwith vehicle, such officers/officials are also authorized to compound the offences by imposing penalty upon the offenders at the spot in the shape of the price of the mineral seized, the royalty and fine. The Rules prescribe the minimum amounts to be realised in case of the 1st offender and enhanced fine upon repetition of such offences for the 2nd and 3rd time. The Rules mandate registration of FIR when an offence of illegal mining is repeated for the 3rd time and when an offence of illegal transportation is committed the 4th time.

23. The National Green Tribunal, vide order dated 5.4.2019(Annexure R-5) passed in a bunch of matters including Original Application No.44/2016 had directed in para 56 of the order for realisation of fine equal to 50% of the showroom value of the vehicle seized as environment compensation, for its release. The said directions were reiterated in a subsequent order dated 26.7.2019, which reads as under:

> *"20. It is made clear that pending further reports, the States must apply the compensation regime as per principles specified in paragraph 56 of order dated 05.04.2019."*

24. However subsequently the said amount of fine was reduced vide order dated 19.2.2020(Annexure R-1) passed by NGT. The jurisdiction of NGT to deal with such matters came to be considered by Hon'ble Supreme Court in various cases including *MC Mehta vs Union of India (2004) 12 SCC 118*, *Mantri Techzone Pvt. Ltd. Vs. Forward foundation & others (2019) 18 SCC 494* and *The Director-General Road Development National Highways Authority of India vs. Aam Aaadmi Lokmanch & others Civil Appeal no. 6932 of 2015 decided on 14.7.2020* and Hon'ble Supreme Court has virtually widened the jurisdiction of NGT while interpreting section 15 and 20 of the Act and has held that wherever environment and ecology are being compromised and jeopardised the Tribunal can apply Section 20 for taking restorative measures in the interest of environment.

25. In these circumstances, the NGT having prescribed a certain amount of compensation to be realised from those who damage ecology and environment, which in any case is also provided in Rule 102 and 104 of Mining Rules 2012, the same cannot be called to question in any manner and needs to be meticulously implemented.

26. Rule 101, while providing for seizure of a vehicle and its release upon payment of penalty/fine also lays down as to what is to be done in case the offender does not deposit the fine/compounding fee. Sub-rule 6(v), as extracted from Rule 101, already reproduced above reads as under:

> **Rule 101(6)(v)**
>
> (6) If the person in-charge of the carrier refuses to pay the penal amount under sub-rule (5), the officer in-charge of the check-post or the barrier or the authorised inspecting officer shall –
>
> (i) x x x
>
> (ii) x x x
>
> (iii) x x x
>
> (v) give an option to the owner or in-charge of the carrier to either compound the offence by paying the penalty amount or face criminal legal action of registration of an FIR and further proceedings where a carrier together with the mineral is seized by an authorised officer .

27. Sub-rule 10 of Rule 101 further provides that if the amount levied is not paid within a period of one month from the date of order, the vehicle/property in question is liable to be confiscated by an order of Court. Rule 101(10) reads as follows:

> "**Rule 101(10) :** All properties seized shall be liable to be *confiscated by an order of the Court* trying the offence, if the amount of fine and other sum imposed are not paid within a period of one month from the date of order.

28. The MMDR Act and the Rules, as an effective tool for protecting and preserving environment, need to be meticulously implemented in view of the object to be achieved thereof. However, while ensuring that no offender manages to escape punishment and is dealt with sternly, it also needs to be ensured that the principle of *'Audi Alteram Partem'* is observed under all circumstances. The rules of natural justice can not be given an absolute bypass. Deprivation a person of his property without proper procedure could even be infringement of his right of property as guaranteed in Article

300A of the Constitution of India. As such, the rights of the parties are required to be delicately balanced. In case any person is to be deprived of his property, rules of natural justice demand that he should be given an opportunity to be heard so as to enable him to put forth his defence. Retaining a vehicle indefinitely without an order of Court virtually amounts to confiscation without hearing and is a violation of the aforesaid principle.

29. In the instant case, the respondent authorities have neither lodged any FIR nor initiated any confiscation proceedings despite a period of good 9 months having elapsed since seizure of vehicle. Though, the authorities cannot be forced to prosecute any offender in case the authorities do not wish to prosecute such offender, but certainly the authorities are expected to conduct themselves fairly and initiate confiscation proceedings in case the vehicle is not intended to be returned back. The owner has been deprived of his right to lay claim to the said vehicle which could have been possible in case confiscation proceedings had been initiated in the Court. In the present situation, the petitioner is unable to even have recourse to provision of section 451 Cr PC or 457 Cr PC. While an application for release of property in terms of section 451 would be maintainable during the pendency of a trial which is not pending in the instant case, an application in terms of section 457 would be maintainable only if such seizure is reported to the Court by the Magistrate which is also not the case in hand as the seizure, as per Mining Rules 2012 is not supposed to be reported to the Court unlike the provisions of such rules in some other States as in State of Rajasthan wherein as per Rule 54(5) of Rajasthan Mines and Mineral Concessions Rules, 2017, such seizure is required to be reported to the Court within 72 hours of seizure. Thus, on account of such

inaction on part of the authorities, the Courts can not be said to be seized of the matter and thus would be unable to exercise jurisdiction for the purpose of release of vehicle on *"superdari"*. The authorities have virtually deprived the owner/petitioner of the vehicle without any order of the Court though as per Rule 101(10) it is only under the order of Court that a vehicle can be confiscated. Deprivation of vehicle in this manner is nothing short of infringement of right of property as guaranteed in Article 300A of the Constitution of India and certainly needs to be deprecated. It has thus held that the respondent authorities, without obtaining an order of confiscation from the Court, cannot be permitted to detain a seized vehicle indefinitely upon refusal of the owner to pay compounding fee. The respondents in para 7 of reply, while replying to Query no. 4 have virtually admitted that question of indefinite detention does not arise under the scheme of Act. Question No. (ii) stands answered accordingly.

Question (iii) *(regarding bar on release of vehicle on* "superdari" *):*

30. The learned counsel for petitioners argued that the vehicles belonging to the petitioner are lying at the Police Station since last several months which is contrary to the directions issued by the Supreme Court in *Sundarbhai Amba Lal Desai v. State of Gujarat - (2002) 10 SCC 283*, in which it has been held that the powers under Section 451 Cr.P.C., 1973 should be exercised expeditiously for release of vehicles on *'superdari'*.

31. Opposing the aforesaid contention, the learned State counsel has submitted that a conjoint reading of Section 21(4A) of the MMDR Act read with Rule 101 of Mining Rules 2012 clearly reveals the intent of the legislature and the rule making authority that the inevitable consequence of the seizure of any vehicle would be its confiscation particularly when cost of mineral,

royalty, environment compensation is not paid. It has been submitted that the object of the mining laws will be defeated if the vehicles seized for violation of the provisions of the MMDR Act and Rules are released on *'superdari'* under the provisions of Section 451 or section 457 of the Cr.P.C.

32. The learned State counsel has vehemently argued that once release of vehicles and superdari has been specifically prohibited by NGT, the Courts cannot go against the mandate of NGT by releasing the vehicle on *"superdari"*. The learned counsel, in order to hammer forth his aforesaid submission, has referred to order dated 19.2.2020(Annexure R-1) passed by NGT in modification of earlier directions issued on 5.4.2019. As per order dated 5.4.2019, an amount equal to 50% of show-room value of seized vehicle was required to be deposited as penalty for release of such vehicle. However vide order dated 19.2.2020, the said amount was reduced. Para 5 of the said order wherein different slabs of penalty amount have been prescribed for release of seized vehicles on the basis of their value and age is reproduced hereinunder:

"5. Having regard to the above practical difficulty, we modify the orders dated 5.4.2019 and 26.7.2019 as follows :

S.No	**Category of vehicle**	**Penalty amount**
1	Vehicles/equipments/excavators with show-room value more than Rs. 25 lakhs and less than 5 years old	Rs. 4 Lacs
2	Vehicles/equipments/excavators with show-room value more than Rs. 25 lakhs and more than 5 years old but less than 10 years of old.	Rs. 3 Lacs
3	For the remaining vehicles older than 10 years/equipments/excavators which are otherwise legally permissible to be operated and not covered by Sr. No.1 & 2	Rs. 2 Lacs
Note 1 :	*On repetition of the offence by the same vehicle / equipment, order dated 5.4.2019 will be applicable.*	

> *Note 2 : The option of release may be available for a period of one month from the date of seizure and thereafter the vehicles may be confiscated and auctioned*

33. The order dated 19.2.2020(Annexure R-1), passed by NGT, prescribing a certain amount of environment compensation to be realised from those who damage ecology and environment, which in any case is also provided in Rule 102 and 104 of Mining Rules 2012, is certainly required to be implemented in letter and spirit. The necessity to preserve the environment and balance the ecology can never be undermined. The offenders surely need to be dealt with an iron hand. Unlike many capital offences which are private in nature against an individual, the offences pertaining to environment are offences against the entire mankind which can affect generations to come. Thus, the Act and Rules framed thereunder or any orders passed for preservation of the same need to be meticulously implemented.

34. However, while implementing order dated 19.2.2020 it needs to be seen as to whether the embargo contained therein against release of vehicles on *"superdari"* is applicable to release at all stages or only to release prior to the stage when the matter reaches the Court. To find the answer to the same it is imperative to peruse order dated 19.2.2020(Annexure R-1) passed by NGT. The relevant extract of said order reads as follows:

> " 1. ……. ……. …… ……. **<u>It was further directed that the vehicles or any other equipments used for illegal mining are required to be confiscated and to be released only on payment of at least 50% of the showroom value</u>** as laid down by the Tribunal earlier in Original Application No. 110 (THC)-2012, Right to Life arising out of Coal Mining in South Garo Hills, District vs. State of Meghalaya and others, affirmed by Hon'ble Supreme Court in (2019) 8 SCC 177.

2. The above order was passed by this Tribunal in exercise of jurisdiction under Section 15 of NGT Act 2010. It is well settled that terms for release of vehicles and equipment involved in violation of special law is not controlled by general provisions of the Cr.P.C. In this connection reference may be made to another order of this Tribunal on the same subject in O.A. No. 840/2019, Atul Chouhan vs. State of U.P. The said order was challenged by State of U.P. in C.A. 1590/2019 which was dismissed by the Hon'ble Supreme Court on 7.5.2019. The Tribunal also referred to order of the Hon'ble Supreme Court dated 26.3.2019 in Criminal Appeal 524/2019, State of Madhya Pradesh vs. Uday Singh that special procedure for confiscation prevailed over procedure under section 451 of Cr PC. In the said case principle laid in Sujeet Kumar Rana, (2004)4 SCC 129 was followed.

3. In spite of above legal position, any other view on the subject will be against the law laid down by the Hon'ble Supreme Court. The plea that different Courts are taking different interpretation and releasing vehicles on *superdari* **without any condition** is untenable. Legal position needs to be brought to the notice of such Courts where matters are taken up."

35. The NGT while passing aforesaid order has referred to four judgements of Hon'ble Supreme Court, the gist of which needs to be noticed and may be stated as under:

JUDGEMENT	RELEVANT FACTS AND GIST OF JUDGEMENT
State of Meghalaya Vs. All Dimasa Students Union, Dima-Hasao District Committee & Ors (2019)8 SCC 177	In the said case, a bunch of orders passed by NGT had been challenged in Supreme Court. However, in the said judgement passed by Supreme Court, there is no reference and no discussion in respect of any bar to release of vehicles on *'superdari'*.
Order dt. 7.5.2019 passed by Hon'ble Supreme Court in	In the said case, an order dated 10.1.2019 passed by NGT in I.A. No. 22/2019 in O.A. No. 670/2018 had been challenged. The order dated 10.1.2019 is a short order vide which the

C.A. 1590/2019 <u>*Atul Chauhan vs. State of UP*</u>.	respondents had been directed by NGT to furnish information with regard to taking steps for recovery of damages for the illegal mining and for regulating the release of vehicles carrying illegally mined material on the pattern dealt with by Tribunal vide order dated 04.01.2019. The appeal challenging the same was dismissed by Hon'ble Supreme Court in limene without there being any reference to facts.
<u>*State of Madhya Pradesh vs. Uday Singh*</u>, 2019 AIR (SC) 1597	In <u>*Uday Singh's case*</u> it was held that jurisdiction under section 451 of the CrPC, 1973 was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings under Indian Forest Act 1927. The said case dealt with amended provisions of Indian Forest Act 1927 *(as amended by State of Madhya Pradesh)*. As per amended provisions of Section 52(1), the officer effecting the seizure, upon being satisfied that a forest offence has been committed, is empowered to confiscate the forest produce together with the tools, vehicles, boats and articles used in its commission. The order of confiscation under Section 52(3) is subject to an appeal and a revision. <u>**Section 52C (**</u>as amended by State of Madhya Pradesh) <u>**stipulates that no Court, Tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (in revision) shall have jurisdiction**</u> to pass orders with regard to possession, delivery, disposal or distribution of the property.
<u>*State of West Bengal v. Sujit Kumar Rana,*</u> (2004) 4 SCC 129	This Court in <u>*Sujit Kumar Rana's*</u> case held that once confiscation proceedings are initiated, the jurisdiction of the criminal court stands excluded. However, the provisions of the Act i.e. The Indian Forest Act 1927 were entirely different. Section 59A(3) of the Indian Forest Act *(as amended by State of West Bengal)* provides that if the authorised officer is satisfied that a forest offence has been committed, then irrespective of the fact whether a prosecution has been instituted or not, he may direct confiscation of the property used in committing the offence. Still further <u>**Section 59G**</u>*(as amended by State of West Bengal)* <u>**of the Act creates a bar on the jurisdiction of Court to make**</u>

	<u>orders with regard to the custody, possession, delivery, disposal or distribution of any property including vehicles seized under section 52 of the Act</u>.

36. The aforesaid judgements reveal that while the former two judgements neither dealt with nor laid any law with respect to release of vehicles on *'superdari'*, the latter two judgements do deal with said aspect and have held that jurisdiction of Courts is barred but the said judgements were delivered while interpreting a different set of Rules where the Rules specifically ousted the jurisdiction of Courts. The said judgements can not be made applicable in instant case under Mining Rules 2012 where there is no such specific provision for ouster of jurisdiction.

37. Hon'ble Supreme Court, while interpreting another set of Rules in ***(2008) 14 SCC 624: State of Madhya Pradesh & ors v. Madhukar Rao*** has taken a different view. In the said case the Hon'ble Supreme Court considered the question as to whether a vehicle or vessel etc. seized under section 50(1)(c) of the Wild Life (Protection) Act, 1972 can be released by Magistrate during the pendency of trial in exercise of powers under section 451 CrPC, 1973. After considering the provisions of Section 50(1)(c) of the Act and section 451 CrPC, it was concluded that there could be no bar on the power of the Court for exercise of powers under section 451 CrPC for interim release of the seized vehicles by the Judicial Magistrate.

38. From perusal of judgements rendered by Hon'ble Supreme Court in <u>*Uday Singh's case*</u>(supra) and <u>*Sujit Kumar Rana's case*</u>(supra) and also <u>*Madhukar Rao's case*</u>(supra), it is borne out that it is the specific provision of the Rules which holds the key to the question of there being any bar or

not to release of vehicle on *'superdari'*. The Mining Rules 2012, however, do not contain any such provision from which it could be inferred that jurisdiction of Courts is ousted or that there is any specific bar against release of a vehicle on *"superdari"*.

39. In *Nongstoin PS & others Vs. State of Meghalaya 2019 CrLJ 4466*, wherein release of truck, seized on account of carrying coal illegally, was being opposed on the strength of order passed by the NGT mandating release of seized vehicles only upon recovering damages to the extent of 50% of the showroom price of the vehicle, the Meghalya High Court, while relying upon *Madhukar Rao's case* (supra) held that the order of NGT would not take away the power and jurisdiction of the Magistrate/Criminal Court to adjudicate on the issue of release of seized vehicles under section 451 CrPC.

40. The legal position regarding application of section 451 Cr.P.C., being well settled, the question regarding release of a vehicle seized under provisions of MMDR or under the rules framed therein i.e. Mining Rules 2012, on *"superdari"*, or as regards there being any bar to such release also needs to be examined in context of the stage at which release of vehicle on *"superdari"* is sought. The following stages after seizure could be visualized:

(i) Immediately after seizure of vehicle but before any intimation regarding such seizure is sent to Court or before lodging of FIR/complaint by authorities concerned;

(ii) During the course of confiscation proceedings, whether or not any FIR is lodged.

(iii) After any intimation regarding seizure of vehicle is sent to Court or after lodging of FIR where investigation or trial is pending;

41. As far as stage (i) is concerned i.e. before any FIR is lodged or any intimation regarding seizure is sent to Court, the Court cannot be said to be seized of any matter pertaining to seizure of vehicle and as such resort cannot be had to provisions of section 451 Cr PC or 457 Cr PC. While an application for release of property in terms of section 451 could only be maintainable during the pendency of a trial, an application in terms of section 457 Cr.PC would be maintainable only if such seizure is reported to the Court by the authorities concerned. As regards stage (ii) and stage (iii), recourse to provisions of section 451 Cr PC and 457 Cr PC could be had provided there is nothing inconsistent to the said provisions in the Rules in question. The Mining Rules 2012, however, do not contain any such provision from which it could be inferred that jurisdiction of Courts is ousted or that there is any specific bar against release of a vehicle on "superdari".

42. The powers conferred by section 451 and 457 of Cr PC cannot be ousted once the Court gets seized of the matter in respect of which *'superdari'* is sought. No doubt MMDR is a special Act and the provision of Special Act override any general provisions contained in Cr.P.C. but in MMDR Act there is no such provision ousting the jurisdiction of Courts to invoke provisions of section 451 or 457 of Cr PC at appropriate stage unlike some other special Acts where it has specifically been ousted. Following are some of the instances, wherein jurisdiction is specifically ousted:

(i) Indian Forest Act 1927 :

> Section 52C (as amended by State of Madhya Pradesh) stipulates that no Court, Tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (in revision) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property.
>
> Section 59G*(as amended by State of West Bengal)* of the Act creates a bar on the jurisdiction of Court to make orders with regard to the custody, possession, delivery, disposal or distribution of any property including vehicles seized under section 52 of the Act.
>
> Similar amendments have been made by other States as well.

(ii) Delhi Excise Act 2009:

> Section 61 of the Act puts an embargo on jurisdiction of Courts, and provides that no Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, shall have jurisdiction to make any order with regard to any intoxicant, material, still, utensil, implement, apparatus or any receptacle, package, vessel, animal, cart, or other conveyance used in committing any offence, which is seized or detained under the Act.

43. The MMDR Act, unlike some other enactments, however, does not impose any absolute bar on moving an application on *'superdari'*. In these circumstances, the bar as referred to in order dated 26.7.2019 as modified in order dated 19.2.2020(Annexure R-1) thus, can only be relatable to a situation when the Court is not seized of the matter in any manner. In other words when there is neither any FIR/complaint nor any application filed by behalf of the respondent authorities for confiscation, the Illaqa Magistrate would not be competent to entertain any application for *'superdari'* but would be competent when any FIR/complaint is lodged or any application for confiscation is filed on behalf of the respondent authorities. Question no. (iii) is answered accordingly.

44. As an upshot of discussion made above, this Court is of the opinion that even if the Illaqa Magistrate may not be able to take cognizance of any offence under MMDR Act after expiry of 3 months in terms of Rule 106 and 115 of Mining Rules 2012, but the confiscation proceedings are independent proceedings and there is no such limitation provided for initiating the same and the only rider therein as per Rule 101(10) is that such proceedings can be initiated after expiry of one month of the imposition of penalty in case such penalty is not paid. Sitting over the matter for an unreasonable would be prejudicial to the owner inasmuch as not only the owner would be deprived of an opportunity to put forth his case against confiscation but he would remain deprived of use of his vehicle which rather would deteriorate on account of its disuse and vagaries of weather. The authorities, on their own certainly cannot confiscate the vehicle and as per Section 21(4A), it is only under the orders of the Court that the same can be confiscated and further disposed of. The respondent authorities should therefore take necessary steps for moving the Court concerned so as to seek permission to confiscate the vehicle in question after giving due opportunity to its owner/accused who may be able to successfully show that the same is not liable to be confiscated.

45. The following directions are thus issued to the respondents:

(i) The respondents are directed that in future all such cases where a vehicle is seized in terms of MMDR Act or Rules framed thereunder and the penalty imposed is not paid within a reasonable time, either the requisite steps, as per rules, shall be taken for prosecuting the accused or an appropriate application shall be filed for confiscation of the vehicle in terms of Rule 101(10). A period of 3 months can well be said to be a fairly reasonable time so as to enable the authorities concerned to take requisite steps in this direction. Once a vehicle is ordered to be confiscated, further steps for auctioning the same may be taken immediately instead of retaining the vehicle in the police station where its condition is bound to deteriorate which would be a loss to the State as well as it will not be able to recover much amount from auction of the vehicle on account of deteriorated condition of the vehicle.

(ii) All those vehicles, including the vehicles of the petitioners in both the cases, which are presently lying seized by respondent authorities for more than three months, pursuant to inspection carried out in terms of Rule 101 of Mining Rules 2012, and in respect of which the authorities have neither lodged any FIR nor instituted any complaint in the Court and have not even initiated confiscation proceedings shall be dealt with under provisions of Rule 101(10) immediately. The Director, Department of Mines and Geology, Haryana shall ensure that the needful in this regard is done within two weeks from today.

(iii) Upon the respondent authorities either choosing to lodge a FIR/complaint or choosing to move an application under rule 101 (10) of Mining Rules 2012 for confiscation of vehicle, it shall be open to the Court concerned to entertain an application for release of the vehicle on *'superdari'* during the pendency of such proceedings if there is likelihood of delay in conclusion of such proceedings. The Court dealing with such application shall decide the same independently while considering all such pleas as may be raised by the parties. The Court concerned shall, however, endeavour to dispose of such applications at the earliest.

(iv) While considering release of vehicle on *"superdari",* the Court may choose to impose any such strict conditions as deemed fit. The Court concerned may even direct the applicant to deposit in Court an amount equal to the penalty imposed by the authorities concerned or part thereof, in addition to any other condition.

46. Further, since some minor errors have been noticed in the Mining Rules 2012, which are there not only in the Rules published by private publishers

but are also present in copy of the notification which was furnished by the learned State counsel, the respondent authorities to consider the feasibility of having a relook at the Rules for carrying out necessary amendments, if deemed appropriate particularly in respect of the following issues which have been noticed :

(i) In Rule 101(5), in the existing rule the authorised officers/officials in charge of a check post are required to take action as provided under rule 104 in respect of any violation pertaining to transit pass or transport permit whereas the consequences for such violations such violations are in fact prescribed in rule 102 and not in 104;

(ii) Similarly in Rule 101(8) it is stated that a person found transporting any mineral in contravention of the provision of the rules would be liable for punishment under rule 105 whereas rule 105 does not prescribe any punishment and pertains to liability of all those persons who are In-charge and responsible to the company when an offence is stated to have been committed by company. Thus it needs to be clarified as to whether in terms of Rule 101(8), a person is to be penalized for illegal transportation or illegal mining and under which specific rule;

(iii) While Rule 101(7) refers to certain action to be taken '*under the rules'*, when it is found to be a case of under-weighment of the mineral being transported, however there is no specific rule dealing with the penalty to be imposed in case of under-weighment of mineral. It needs to be specified as to whether in a case where the mineral being transported is found to be excess of the quantity which is mentioned in 'transit pass', the same has to be taken to be a case of illegal transportation or as to whether a lesser penalty is to be provided;

(iv) There is an element of overlapping/duplicity as regards the provisions pertaining to cognizance inasmuch as there are two rules i.e. Rule 106 and Rule 115, dealing with the same issue. Said rules read as follows:

RULE 106	RULE 115
106. Offences cognizable only on written complaint. No Court shall take cognizance of any offence punishable under these rules except upon a complaint in writing made by the Director or any other officer authorised by him **to the police** in this behalf within three months of the date on which said offence is alleged to have been committed.	**115. Offences cognizable only on written complaint.** No Court shall take cognizance of any offence punishable under these rules except upon a complaint in writing made by the Director or any other officer authorised by him in this behalf within three months of the date on which said offence is alleged to have been committed.

The aforesaid two rules are identical but for the words *"to the police"* which exist in Rule 106 but are missing in Rule 115 though both are in respect of *"offences punishable under these rules"*. The said duplicity needs to be resolved.

(v) Since it has been informed that the department has taken initiatives for introducing e-governance processes which have led to a much more effective implementation of the Act particularly with the introduction of *'e-Ravaana'* transit passes/bills, the authorities shall continue with their endeavours of increasing e-governance in every sphere which may even be incorporated specifically and made a part of the rules.

47. Both the petitions stands disposed of accordingly with the aforesaid directions. However before parting with the judgement, this Court places on record its appreciation for the invaluable assistance rendered by both the learned counsel and also by Shri Parvesh Sharma, State Mining Engineer and Shri R.S. Thakran, Mining Engineer, Department of Mines and Geology, Haryana.

(GURVINDER SINGH GILL)
JUDGE

04.02.2021
(kamal)

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**

MOHAN SINGH
2021.02.04 15:59
I attest to the accuracy and integrity of this document