

ORDER SHEET

WPO/2441/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KUMAR CHANDAN
-VS-
STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : August 23, 2022.

Appearance:

Mr. Sakya Sen, Sr. Adv.
Mr. Sunil Kr. Gupta, Adv.
Mr. Samir Kr. Chowdhury, Adv.
...for the Petitioner

Mr. Amitesh Banerjee, Sr. Adv.
Ms. Ipsita Banerjee, Adv.
...for the State

The Court: Learned counsel for the petitioner contends that the truck of the petitioner, carrying a consignment of coal from Nagaland, has been detained by the West Bengal administration at the border between West Bengal and Assam while it was still within the territory of Assam. It is submitted that although the truck started its journey with such consignment on August 11, 2022 and the valid papers have been produced by the petitioner pursuant to a Co-ordinate Bench order dated June 29, 2022 passed in WPO/2302/2022, the West Bengal administration is preventing the truck from passing through.

Learned counsel places reliance on the Annexures to the writ petition in an effort to corroborate his contention as regards the documents having been produced from the custody of the petitioner.

Learned counsel appearing for the State, on the other hand, submits that there are several discrepancies which are palpable on the face of the documents, which appear from the purported documents produced by the petitioner. As for example, it is contended that the document dated July 8, 2022, which comprises a part of the writ petition as Annexure P/4 at page 80 thereof, does not bear any source e-mail, for the West Bengal administration to verify the authenticity thereof. It is submitted that although the letter-head and format of such documents issued by the Nagaland Directorate of Geology and Mining come in a particular form, the same has not been adhered to in the document annexed at page 80, raising a suspicion as regard the authenticity of the said document.

Learned counsel specifically places reliance on the document annexed at page 47 of the writ petition, which is a communication by the Additional Director & HoD of the Nagaland Directorate of Geology and Mining to the Chief Secretary, Bihar, Patna, to insist upon the proposition that the specific e-mail id was given at the right-hand top of the said communication in the said document, which is missing in the document dated July 8, 2022 purported to be issued by the same authority.

As such, in view of such palpable suspicion, which is in line with the allegation of illegal smuggling of coal and other mining produce from the North-Eastern states through the state of West Bengal, the respondent authorities have detained the truck of the petitioner. It is, however,

submitted that in the event the documents produced by the petitioner could be verified from the appropriate source, that is, the Directorate of Geology and Mining, Nagaland, there would not have been any objection on the part of the respondent authorities to permit the truck to go through West Bengal to its destiny at Madhepura, Bihar.

A perusal of the documents reveals certain aspects of the matter. The Co-ordinate Bench, in its order dated June 29, 2022 passed in WPO/2302/2022, a previous writ petition filed by the petitioner in similar context, directed the petitioner to furnish a document “in the same nature as the document issued by the Directorate of Geology and Mining, Nagaland with current validity” and furnish the same before the concerned State respondents within a period of two weeks from that date.

However, the subsequent document annexed at page 80 is of July 8, 2022 and apparently issued post issuance of the previous document. Although there may be some justification in the apprehension of the State respondent as regards the authenticity of the document at page 80, in such cases, the standard of proof applicable to a criminal proceeding ought to be followed. Unless the respondents have something clinching to incriminate the petitioner of a criminal charge beyond reasonable doubt, merely on the preponderance of probability, the authorities do not have any jurisdiction to stop the passage of the vehicle-in-question through the State of West Bengal.

That apart, it was specifically stipulated by the learned Single Judge in WPO 2302 of 2022 that the petitioner was unable to furnish a

document in the same nature as the document issued by the Directorate of Geology & Mining, Nagaland.

The document annexed at page 79 dated May 31, 2022 reveals the Standard Operating Procedure (SOP) for transit transportation of Nagaland coal by road through Srirampur/Barohisha gate, Alipurduar district, West Bengal to other parts of the country and contemplates the production of certain specific documents, such as transit pass-cum-coal challan issued by the Department of Geology & Mining, Nagaland, e-way bill/GST from Nagaland and challan or transit pass duly certified and issued by the authorised officer of the Department of Geology & Mining, Nagaland against payment of royalty. In the present case, substantial materials have been produced by the petitioner with the petition to satisfy the conscience of the Court with regard to the fact that similar documents of Nagaland were produced from the custody of the petitioner after the truck was detained.

Mere apprehended discrepancy in the document, being annexure 'P-4' at page 80 of the writ petition, by itself does not vitiate the free passage of the coal consignment through the State.

As such, the detention of the petitioner's truck is not based on reasonable grounds of objection. Hence, the said detention is vitiated in law. Accordingly, WPO 2441 of 2022 is allowed, thereby directing the respondent authorities to immediately release the petitioner's truck, carrying the coal consignment-in-question, under e-way bill no.8312-4561-3641 and transit pass cum challan vide book no.16, serial no.779, which are Annexure P-9 and P-10 to the present writ petition, for the purpose of ensuring smooth

transportation of the said consignment through the State of West Bengal on to its final destination at Madhepura.

The petitioner will be at liberty to take appropriate steps to validate the extension of the e-way bill, which is submitted to be valid till today, in the light of the above order.

The parties, as well as all concerned, shall act on the written communication of the learned Advocates-on-Record for the parties, accompanied by a server copy of this order, without insisting upon prior production of the certified copy for the purpose of implementing this order.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

sg/pa.